

BAIL SLIP

The Appellant/Accused namely M.Narayanasamy, S/o.Muthuraman, was directed to be released on bail as per the order of this court dated 08.09.2015 made in Crl.Mp.No.1 of 2015 in Crl.Appeal No.558 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.4.2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

CRIMINAL APPEAL NO. 558/2015

AGAINST

SPECIAL C.C. NO.3/2013

(On the file of the Special Judge for corruption cases
(Principal District and Session Judge) Puducherry)

M. Naryanasamy (55)

S/o. Muthuraman,

3, Peria Irusampalayam Road,

Kannamma Thottam, Ariyankuppam,

Puducherry 605 007.

... Appellant/ Accused

Vs.

State

represented by Inspector of Police,

Vigilance & Anticorruption,

Puducherry

(Cr.No.1 of 2011)

.... Respondent/ Complainant

Prayer:

Order of Conviction and Sentence dated 20.8.2015 recorded against the Appellant in Special C.C. No. 3 / 2013 on the file of the Learned Special Judge for Corruption Cases, Puducherry have been challenged under this Appeal.

Appearance:

For the Appellant :- Mr. R. Karthikeyan,
Learned Counsel for the
Appellant

For the Respondent:- Mr. M.R.Thangavel,
Assistant Public
Prosecutor, Puduchery

JUDGEMENT

Invoking the provisions of Section 374 (2) of the Code of Criminal Procedure this Memorandum of criminal appeal is filed by the Appellant challenging the order of conviction and sentence dated 20.8.2015 recorded against him in Special C.C. No. 3/2013 on the file of the Learned Special Judge for corruption cases (Principal District and Sessions Judge), Puducherry convicting him under Section 7 of Prevention of Corruption Act, 1988 and sentencing thereunder to suffer three years of rigorous imprisonment and to pay a fine of Rs. 20,000/- in default to suffer a further period of six months of rigorous imprisonment. The entire fine amount was paid on receipt.

2. That on 26.11.2013 PW-14 Mr. G. Saravanan the then Inspector of Police attached to V& AC Unit, Puduchery had laid a final report against the Appellant under Section 7 of Prevention of Corruption Act, 1988 alleging that on 23.8.2011 at the office of the Commune Panchayat, Bahour, Puduchery, while the Appellant, was entrusted with the work of lower division clerk-cum-in-charge of Executive Officer, had demanded and accepted a sum of Rs. 10,000/- being an illegal gratification other than legal remuneration as a motive or reward from PW2 M. Mahesh Kumar, a multi purpose worker for the purpose of processing his file relating to his appointment as multi purpose worker and to get the approval of the local administration department for claiming his salary.

3. After taking cognizance of the offence under Section 7 of Prevention of Corruption Act, 1988 the Learned Special Judge had, after hearing the Learned Special Public Prosecutor appearing for the Respondent / complainant and the Learned Counsel appearing for the Appellant / Accused, framed a charge under Section 7 of Prevention of Corruption Act, 1988.

4. When the ingredients of the charge, were explained and questioned, the Appellant / Accused had denied the charge and claimed to be tried. He, therefore, was put on trial. The prosecution in order to prove their case had totally examined 14 witnesses on their part and during the course of their examination Ex. P-1 to P -26 were exhibited. Besides this, 5

material objects were also marked.

5. The gravamen of the prosecution case is this:-

That on 23.8.2011 while the Appellant Mr. M.Narayanasamy was working as a lower division clerk and placed incharge of the post of Executive Officer of Bahour Commune Panchayat, had demanded PW2, Mr. M. Mahesh Kumar, a Multi purpose Worker a sum of Rs. 10,000/- to process his file relating to his appointment as Multi Purpose Worker and to get the approval of the local administration department for claiming his salary for which PW2 had replied that since he was economically very poor he was not in a position to mobilize that much of amount. The Appellant had again asked him as to whether he could pay the money after joining his duty and getting his salary. Even for this also, PW2 had replied no. However he had produced all the requisite certificates for admitting him in the post. Only thereafter, he was allowed to join his duty. After passing of two days the Appellant had again been pestering PW2 to pay the amount of Rs. 10,000/- so as to pay to the Commissioner. Since the Appellant had repeatedly been demanding the amount, PW2 had lodged a complaint on 23.8.2011 before PW13 Mr. R. Kumar, the then Inspector of Police, attached to Vigilance & Anti Corruption, Puduchery. After receiving that complaint PW13 had registered a case in Crime No.1 of 2011 under Section 7 of Prevention of Corruption Act, 1988 and taken up the case for investigation. The First Information Report prepared by PW13 was marked as Ex. P8. The complaint lodged by PW2 was marked as Ex. P3.

6. Then PW13 in order to trap the Appellant, had constituted a trap team and instructed PW2 to arrange a sum of Rs. 10,000/-. Accordingly PW2 had mobilized an amount of Rs. 10,000/- and handed it over to PW13. The amount of Rs. 10,000/- contains Rs. 500 denomination (totally 20 in number) which were marked as MO-1 series.

7. On the request made by P.W. 13 two independent official witnesses viz. PW1 Mr. Murugesan, the then Secretary of Public Servants Co-operative Society and one Krishnamurthy had reported him. Then PW2 Mr. Mahesh Kumar was introduced to them and the witness were also explained about the intrinsic nature of the complaint. Thereafter PW13 had demonstrated about the significance Sodium Carbonate Solution Test and he had also explained as to how the Appellant could be trapped at the time of receiving the bribe. Thereafter phenolphthalein powder was swabbed on each currency notes viz., Rs. 500 denomination (20 in nos.) and entrusted with PW2. He had also received the same and placed it in his shirt pocket. The demonstration proceedings were continued till 10.45 a.m. from 9.45 a.m. In this connection a magazine was prepared and the signatures of the

witnesses as well as of PW2 were obtained on it. (Ex. P1).

8. At about 10.45 a.m. under the head of PW13 the trap team had proceeded to the office of Bahour Commune Panchayat in a private van bearing Registration No.TN31AV 0321 driven by P.W.9, P.Iyyanar. While the complainant and the witnesses were entering into the office, P.W. 13, who is the trap laying officer along with the other members of the trap team, had taken their respective position outside the office. Prior to that PW2 was instructed to show the hand kerchief, no sooner than the bribe amount was received by the Appellant. After entering into the office of the appellant, P.W.2 being the multipurpose worker had signed in the attendance register. On seeing him, the appellant had called, P.W.2 (complainant) and asked him as to why he had not done what he was asked to be done? For which he had replied that he was prepared to do that and thereafter he had handed over a sum of Rs.10,000/- (Rs.500/- denomination 20 in number), which was received by the appellant. Then, P.W.2 had come out of the office and shown the pre-arranged signal.

9. P.W.13, the trap laying Officer had asked him as to whether he had handed over the money, for which he had replied 'yes' and subsequently P.W.13, the trap laying officer along with the other members of the trap team had entered the office of the appellant. On interrogation the appellant had accepted that he had received the money and placed it in his pant pocket. At about 12.15 p.m. the appellant was arrested and was taken to the cabin of the Commissioner, where the bribe amount of Rs.10,000/- (Rs.500/- denomination 20 in number) was recovered from the possession of the appellant by P.W. 13. Subsequently, on the instructions given by P.W.13, a sodium carbonate solution was prepared in four glass tumblers. At first P.W.2 Mr. Maheshkumar was asked to dip his right hand fingers in one of the glass tumblers and his left hand finger in another glass. Similarly, the appellant was asked to dip his right hand fingers in the solution kept in one of the glass tumblers. While doing so, the solution was changed in to pink colour. Similarly, when he had dipped his left hand fingers, no colour change was effected. The said solution, contained in all the four glass tumblers was collected and poured into separate bottles and sealed in the presence of witnesses. P.W.13 and other witnesses had signed over the labels pasted on the bottles. The 500/- rupee currency notes (20 in number) were also placed in a cover and sealed separately in which P.W.13 and other witnesses had signed.

10. With regard to the trap proceedings, P.W.13 had prepared a magahar, which was marked under Ex.P2. Thereafter, the appellant was taken to the office of the Superintendent of Police (Vigilance & Anti-Corruption) . Subsequently, he was sent to Court for being remanded to judicial custody.

11. Then, P.W.13 had examined P.W.2 Mr. Maheshkumar and other witnesses, and recorded their statements separately. He had also prepared a rough sketch on 23.08.2011 with reference to the place of occurrence which was marked as Ex.P.10.

12. On 25.08.2011 in accordance with the instructions of the Superintendent of Police (Vigilance & Anti Corruption) the entire case records were entrusted with P.W.14 for further investigation. After the completion of the investigation P.W.14 had laid the final report against the appellant on 26.11.2013 under Section 7 of the Prevention of Corruption Act, 1988.

13. When the incriminating circumstances arising from the testimonies of the prosecution witnesses were put to the appellant and explained he had replied that the case was foisted against him. He had also filed a written statement which was received and recorded by the learned trial Judge.

14. (The English translated version of the statement of the appellant which is in vernacular language is given as under):

"That on 23.02.2011 at about 11.00 a.m. on permission I came to the office belatedly, and engaged in official work. Thereafter, when I was returning from the toilet after answering the call of nature, P.W.2, M.Maheshkumar came running towards me from the back entry of the office, and told me 'sir, I had placed a cover on your table. Since the Commissioner was not present in his office, I had placed it on your table and he had also requested to hand over that cover to the Commissioner. While he was telling this two persons had caught me and forcibly taken to a van which was stationed outside the office. When I questioned them, they told me that you must be examined in connection with the Panchayath Commissioner. I was taken to the Office of the Vigilance and Anti corruption, which is situated at Puduchery Muthialpet. When I was brought to the said office, they had given me a cover and compelled to open it and count the currency notes which were placed in it. Excepting this I did not commit any wrong. I did not even receive any money from P.W.2. "

15. One Mr. Sampathkumar, UDC, Bahour Commune Panchayat was examined as D.W.1 and one Thiru.Rudra Gowd, P.T. Director, LAD, Puducherry was examined as D.W.2. During the course of their examination Ex.D1 was marked on the side of the defence. Apart from this Exs.X1 to X4 were also marked.

16. On appreciation of the evidences both oral and documentary, the learned Special Judge had found that the prosecuting agency had brought home the guilt of the appellant

beyond all reasonable doubts, and thereafter he had concluded that the charge under Section 7 of the Prevention of Corruption Act, 1988 against the appellant/accused was proved and accordingly, he had convicted the appellant under Section 7 of the Prevention of Corruption Act, 1988 and sentenced him there under as afore stated.

17. On perusal of the Judgment of the trial Court along with the evidence of the prosecution witness as a prime question which arises for the consideration of this Court is :

"Whether the order of conviction and sentence dated 20.08.2015 recorded by the learned Special Judge against the appellant is sustainable in law?"

18. Mr. R. Karthikeyan, Learned Counsel appearing for the appellant/accused has adverted to that the ingredients of the offence under Section 7 of the Prevention of Corruption Act, 1988 were not made out as against the appellant and therefore, he has urged to set aside the Judgment impugned in this Criminal Appeal. He has further maintained that the evidence of the prosecution witnesses are contradictory and conflicted against each other and the findings of the learned Special Judge placing reliance on the evidence of the prosecution witness was totally against the principles of law and it require the immediate invention of this Court.

19. Learned counsel for the appellant while advancing his arguments has taken this Court to the testimonies of P.W.2 and has contended that the order of conviction recorded against the appellant shall have to be set aside on the following three grounds:

(i) the demand and acceptance of the bribe amount has not been proved by the prosecution;

(ii) the averments of the written statement submitted by the appellant/accused are in fair congruence with the answers given by P.W.2 in his cross-examination; and

(iii) The evidence of P.W.2 seems to be solitary in nature, which is not at all corroborated by the shadow witness viz., P.W.1 Mr.R.Murugesan, Secretary of the Workers Co-operative Societies Puducherry.

20. Point No.1 It is the specific charge of the prosecution that on 23.08.2011 the appellant had demanded and accepted a sum of Rs.10,000/- from P.W.2 being an illegal gratification other than the legal remuneration as a motive or reward for the purpose of processing his file relating to his appointment as 'multi purpose worker' and for getting the approval of the

local administration department for claiming his salary.

21. This Court has meticulously scrutinized the cross examination of P.W.2 Mr. Maheshkumar, on whose complainant the case in crime No.1 of 2011, on the file of the Inspector of Police (Vigilance and Anti Corruption) comparatively was registered against the appellant. Prior to the discussion with reference to the cross examination of P.W.2, it is imperative on the part of this Court to examine the evidence of P.W. 1 (an independent witness) comparatively with the evidence of P.W.13, who is the trapping officer. P.W.1 says in his chief examination that after the appellant was brought to the office of the Panchyath Commissioner, he was interrogated. While so, he had produced the bribe amount from the right side pocket of his pant and replied that he had received the amount from P.W.2 M. Maheshkumar. On coming to the evidence of P.W. 13, (trap laying officer), he has stated that the appellant had replied that he had received the amount and placed in his pant pocket. He did not say, in which side pocket he had placed the bribe amount. P.W.2 M. Maheshkumar did not say that the appellant had put the amount in his pant pocket, instead he has simply stated that the appellant had received the amount.

22. It is significant to note here that P.W.2 Mr. M. Maheshkumar (complainant) has stated in his cross examination that since he had not produced the medical fitness certificate it took time for him to join in his duty. He has specifically stated in his cross examination that he had lodged the complaint only against the Commissioner as he had not permitted him to join duty. He went one step further and answered that he had lodged the complaint with the Vigilance Department alleging that the Commissioner had demanded money from him. He has further stated that he was instructed by the Vigilance Department to handover the bribe money to the Commissioner and only for that purpose he was taken to Bahour Commune Panchayat Office.

23. Obviously P.W.2 had continued in his cross examination that at the material time, he did not know as to whether the Commissioner was present in his office or not. It is relevant to note here that since the Commissioner was not available in his office he had asked the appellant Mr. Narayanasamy to handover the amount to the Commissioner. Only for the purpose of handing over the money to the Commissioner he had given the money placed in a cover to the appellant. P.W.2 has further deposed in his cross examination that he was examined by the Investigating Officer, while so he had told him that he had placed the money on the table of the appellant Mr. Narayanasamy. He has further added that when he had been to the office of the appellant along with the Vigilance Police the cover was found on the table of the appellant, where he had placed it earlier.

24. It is very important to place it on record that as per the evidence of P.W.2 in his cross examination, when the appellant/accused was asked to count the money in the Vigilance Office, he had counted the money and after reaching the office in a van ,he had written the complaint on 23.08.2011 on the narration of the Vigilance Police.

25. From the cross examination of P.W. 2 it can easily be inferred that the appellant Mr. Narayanasamy had not demanded the amount from P.W.2. As spoken to by P.W. 2, the Panchayat Commissioner alone had demanded the amount. It is also to be noted, that only to pay the bribe amount to the Commissioner, P.W. 2 had been to his office and since the commissioner was not available, the cover was placed on the table of the appellant and that the appellant was requested by P.W. 2 to hand over the cover to the Commissioner as soon as he came to his office.

26. Point No.2 On a harmonious reading of the written statement submitted by the appellant/accused with the answer given by the complainant (P.W.2) in his cross-examination, we can easily understand that the evidence of P.W. 2 in his cross-examination is sailing along with the written statement submitted by the appellant. In his written statement, what he would say is, that when he was returning from the toilet, PW.2 Maheshkumar came running towards him and told him 'sir, I had placed a cover on your table and requested him to handover that cover to the Commissioner. When he was telling this, two persons came there and dragged him to the van and thereafter, he was taken to the Vigilance Office where he was compelled to open the cover and to count the currency notes which were placed in the cover. It is therefore explicit and palpable that the answers given by P.W. 2 (complainant) in his cross examination as well as the written statement submitted by the appellant are in fair in congruence, with each other.

27. Point No.3: The evidence of P.W.2 seems to be solitary in nature, which has not at all been corroborated by the shadow witness P.W.1. But it was shattered into pieces by his own answers given in his cross examination. P.W.1 in his chief-examination has stated that the appellant had produced the bribe amount from his right side pant pocket.

27A. In this connection this Court would like to place it on record that the trap laying officer had miserably failed to dip the right side pant pocket of the appellant in the sodium carbonate solution so as to prove the fact that the appellant had received the money and put it in his right side pant pocket. The failure on the part of the trap laying officer has shaken the very root of the prosecution which resulted in disproving the charge under Section 7 of the Prevention of Corruption Act, 1988 against the accused.

28. The learned Special Judge (Corruption Cases) has totally ignored the above facts and without proper appreciation of the evidences with due care and caution he had simply proceeded to conclude that the prosecuting agency had brought home the guilt of the accused, which resulted in giving wrong finding that, the appellant is found guilty under Section 7 of the Prevention of Corruption Act, 1988.

29. The order of conviction and sentence recorded by the learned Special Judge (Corruption Cases) suffers from want of unimpeachable and unassailable evidence and since it seems to be perverse in nature, this Court finds that it is liable to be set aside.

30. In the result, this Criminal Appeal is allowed and the order of conviction and sentence recorded against the appellant under Section 7 of the Prevention of Corruption Act, 1988 are set aside and the appellant is acquitted of the charge under Section 7 of the Prevention of Corruption Act. Consequently the fine amount paid by the appellant is ordered to be refunded to him and the bail bond, if any, executed in favour of the appellant shall stand cancelled and the persons who stood as sureties on behalf of the appellant are discharged.

Sd/-
Assistant Registrar (CS VI)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Vigilance & Anti Corruption Cases,
Puducherry.
2. The Inspector of Police,
Vigilance & Anti Corruption,
Puducherry.
3. The Public Prosecutor,
Puducherry.

+1cc to M/s.R.Karthikeyan, Advocate, SR.NO.,24557

Criminal Appeals Nos.558 of 2015

GP (CO)
CS/20/10/17