Bail Slip

The Appellant/Accused S/o. Late Velaayuthanm, was directed to be released on bail as per order of this Court dated 15.09.2015 and made in MP.1/15 pending disposal of Crl.A.No.583/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.09.2017

PRONOUNCED ON : 18.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.583 of 2015

V.Subramanian .. Appellant/1st Accused

.. Vs ..

State rep. By
Inspector of Police,
Vigilance & Anti-Corruption
Salem. .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 28.08.2015, made in Spl.C.C.No.16 of 2014, on the file of the learned Special Judge (Special Court for Trial of cases under the Prevention of Corruption Act), Salem.

For Appellant : Mr.M.Rajkumar for
Mr.R.Bhagwat Krishna

For Respondent : Mr.R.Ravichandran
Government Advocate (crl.side)

JUDGMENT

The appellant is the first accused in Spl.C.C.No.16/2014 on the file of the Special Court for trial of cases under the Prevention of Corruption Act, Salem. Aggrieved by the judgment of conviction and sentence, imposed for offence under Section 7 of the Prevention of Corruption Act, to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- and for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, to undergo rigorous imprisonment for 2 years with fine of Rs.5,000/-, the appellant/A.1 is before this Court with this Criminal Appeal.

2.The brief facts of the case, are as follows:-

The appellant herein was employed as Stamping Inspector, II Circle, Salem and he was incharge of issuing verification certificate for weights and measures during the relevant point of time. A reminder notice from his office was sent to the defacto complainant namely, Mr.G.Samsudhin, who was running grocery shop at Ponnammapet, Salem. According to the reminder notice marked as Ex.P.4, the defacto complainant - Mr.G.Samsudhin was asked to appear before the appellant office along with weights and measures and RC Book for verification on 29.07.2002. Accordingly, the defacto complainant went to the office of the appellant on 29.07.2002. On that day, he paid necessary charges of Rs.105/- for verification certificate. The said receipt was marked as Ex.P.2. Thereafter, when the defacto complainant - Mr.G.Samsudhin requested for verification Certificate, the appellant herein demanded Rs.150/- as gratification for issuance of verification certificate. The defacto complainant was unwilling to concede the illegal demand of the appellant. Hence, he lodged a complaint with the Inspector of Police, Vigilance & Anti-Corruption, Salem. The complaint has been taken on file. F.I.R., was registered against the appellant.

3.After completing the necessary formality for trap proceedings, the Trap Laying Officer - P.W.12 along with his team and the defacto complainant - P.W.2 with accompanying witnesses - P.W.3, have gone to the office of the appellant at about 4.30 pm on 29.07.2002. The defacto complainant - Mr.G.Samsudhin, has met the appellant/A.1 and on demand, he tendered the tainted currency to him. The accompanying witness, Mr.Karunanidhi was examined as P.W.3 has witnessed the transaction and heard the appellant enquiring the defacto complainant 'Whether he has brought the money ?' For which, the defacto complainant - P.W.2 has answered in affirmative and given the tainted currency to the appellant. The appellant has received it and entrusted the same to one Mr.Manikam who is arrayed as A.2, in this case. Thereafter, the appellant instructed Mr.Manikam (A.2) to issue verification certificate to P.W.2, the defacto complainant - Mr.G.Samsudhin. Collecting it from A.2, both P.W.2 and P.W.3 left the appellant office, gave the pre-arranged signal to the Trap Laying Officer - P.W.12 and his team. Immediately, the Trap Laying Officer - Mr.Nachiappan (P.W.12) along with the other witnesses have entered the office of the appellant, identified themselves and conducted the phenolphthalein test at the hands of the appellant which turned positive. On enquiry about the tainted money, the appellant/A.1 has informed them that he has given the money to A.2. Thereafter, A.2 who was sitting in the nearby table was enquired and after testing his hands with plain water and found it to turn purple, A.2 was interrogated. On his information, the tainted money was recovered under heap of carbon papers kept in the shelf of lab room. A mahazar was drawn on the spot and the appellant/A.1 along with Mr.Manikam (A.2) were arrested.

4.After obtaining sanction - Ex.P.1 from P.W.1-Mr.Rajaram, former Director or Rural Development, the final report has been filed for offence under Sections 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, against A.1 and under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and under Section 109 I.P.C., against A.2.

5.In support of the case of the prosecution, 13 witnesses were examined; 30 exhibits and 7 material objects were marked. The accused has examined one Mr.Samuvel (D.W.1) on his side to establish his innocence.

6.The trial Court, on evaluation of evidence available on record and after appreciation of evidence, has held that, the prosecution succeeded in establishing the charges against A.1, the appellant herein, a public servant, regarding his demand and acceptance of illegal gratification from the defacto complainant - P.W.2, by misusing his official position. Whereas, the trial Court has acquitted A.2 for the reasons that he had no mens rea to abet the public servant to commit any misconduct and he was not aware of the demand and acceptance of illegal gratification by the appellant/A.1.

7.The learned counsel for the appellant submitted that the trial Court has convicted the appellant/A.1 erroneously both on facts and law and hence, the same requires re-consideration. According to the learned counsel, the charge itself is defective and does not go in consonance with complaint marked as Ex.P.3. In this regard, the learned counsel read over a portion of the complaint wherein, the allegation as made against the appellant/A.1 is that, he demanded Rs.150/- for getting verification certificate when the complainant met him at his office on 29.07.2002 at 10.00 am. Whereas, the charge against the appellant/A.1 is that he demanded Rs.150/- at 17.00 hours on 29.07.2002 and further, pointing out the evidence of P.W.2 - Samsudin, the defacto complainant, the learned counsel contended that the defacto complainant is only a beeda (Pan) shop owner and there is no necessity for him to have weighing stones and measures and therefore, the very basis of the complaint - Ex.P.3 as projected by the prosecution is doubtful. To add suspicion, it is contended that the weighing stones and measures were not seized by the prosecution which is the subject matter for demanding bribe by the appellant. It is also contended by the learned counsel that the tainted money was not recovered from the appellant but, under the heap of carbon sheets in the lab room and even according to the prosecution, it was recovered from the said place on the information given by A.2 who is not found to be guilty of the charges and acquitted by the trial Court.

8.While so, when the tainted money was not recovered from the appellant/A.1 and the alleged demand not been corroborated by any reliable evidence, the appellant/A.1 cannot be held guilty of the charges. It is also pointed out by the learned counsel for the appellant that the phenolphthalein test conducted on the hands of the appellant/A.1 has not given a positive result though, it is alleged that the water colour changed in to very light purple which leads to manipulation of phenolphthalein test. Therefore, he pleaded for acquittal of the appellant/A.1 on the ground that the alleged demand of Rs.150/- as illegal gratification for issuance of verification certificate is not proved through reliable witness.

9.According to the learned counsel for the appellant, the alleged demand of bribe made by the appellant/A.1 on 29.07.2002 at about 10.00 am is proved to be false, in view of the evidence of D.W.1 - Mr.Samuel who has deposed that at that point of time, the appellant/A.1 was examining the weighing machines at his premises located far off from the office of the appellant and he left the premises of D.W.1 only at 2.15 pm after inspection. Pointing the inconsistency in the version of P.W.2 - Mr.Samsudeen and the complaint - Ex.P.3, the learned counsel submitted that as held by the Hon'ble Supreme Court in Suraj Mal v. Delhi Administration (CDJ 1979 SC 365), where the witnesses made two inconsistent statements, the testimony of the witnesses become unreliable and unworthy. Based on such testimony, the accused should not be convicted. It is also submitted by the learned counsel that Ex.P.1 - Sanction order does not reveal the reason or subjective satisfaction of the sanctioning authority to prosecute the case against the appellant/A.1. Hence, it is invalid.

10.The learned Government Advocate (crl.side) appearing for the respondent would submit that the appellant/A.1 who is the authorised person to issue verification certificate after collecting the required fees of Rs.105/- from the defacto complainant has not issued the verification certificate expecting bribe money and sent back the defacto complainant - P.W.2 to arrange the bribe amount of Rs.150/-. Therefore, the defacto complainant - P.W.2, shop owner had approached the Inspector of Police, Vigilance and Anti Corruption, Salem and given the complaint marked as Ex.P.3.

11.After verifying the credence of the complaint, the respondent Police have arranged for trap proceedings. Pointing the portion of the deposition of P.Ws.2 & 3, the learned Government Advocate (crl.side) submitted that the demand and receipt of money by the appellant has been spoken by P.W.2 and P.W.3.

12.Both, P.W.2 and P.W.3 have said that the appellant/A.1 received the tainted money from the defacto complainant - P.W.2 and gave it to A.2 and directed A.2 to give the verification certificate to the defacto complainant - P.W.2. After collecting the verification certificate, both the defacto complainant - P.W.2 and the accompanying witness - P.W.3 came out of the appellant/A.1 office and gave the pre-arranged signal to the Trap Laying Officer - P.W.12.

13.During phenolphthalein test, the hand wash of the appellant/A.1 as well as A.2 found to be positive, the chemical anslysis report on the hand wash of the accused proved the presence of phenolphthalein. Thus, the prosecution has proved the demand and acceptance of bribe money by the appellant/A.1 beyond reasonable doubt. The presumption under Section 20 of the Prevention of Corruption Act, squarely applies and no plausible explanation has come from the appellant/A.1 for receiving the tainted money from the defacto complainant - P.W.2.

14.It is also contended by the learned Government Advocate (crl.side) that the defence witness - D.W.1 is not reliable and even if it is to be taken on face value, it will not help the case of the appellant/A.1 since, the alibi pleaded by the appellant/A.1, at the most indicates that he was present elsewhere on 29.07.2002 till 2.15 pm. Whereas, the trap was after 17.00 hours on that day.

15.This Court, has given its anxious consideration to the arguments made by the learned counsel on either side and the judgments cited by them.

16.From the evidence, it is clear that the tainted money has been recovered from the shelf in the lab room of the appellant/A.1 office and the recovery of the tainted money is on information given by A.2. The hand wash of both the appellant/A.1 and A.2 found to be positive. However, there is doubt 'whether the money was planted to fix the appellant/A.1 or the appellant has voluntarily received the tainted money as illegal gratification. If the tainted money was planted without the knowledge of the appellant, then, there must be some explanation for the presence of phenolphthalein which is warranting in this case.

17.The contention of the learned counsel for the appellant is that the charge and the sanction order are defective. The tainted money was not recovered from the appellant/A.1. The person (A.2) on whose information, the tainted money was recovered has been found not guilty by the trial Court. Therefore, the appellant/A.1 cannot be fixed any criminal liability.

18.No doubt, the charge does not indicate the demand of bribe money on 29.07.2002 at 10.00 am by the appellant/A.1. But, the demand made by the appellant/A.1 at 17.00 hours on 29.07.2002, is found to be proved through the evidence of P.W.2 and P.W.3. There is no reason to disbelieve either P.W.2 or P.W.3. The contradictions pointed out by the learned counsel for the appellant are relating to pre-trap proceedings. However, there is no much significant contradictions found in the deposition of P.W.2 and P.W.3 in respect of demand and acceptance of tainted money by the appellant and in passing it to A.2.

19.The trial Court, has acquitted A.2 on the ground that he has received the money given by the appellant/A.1 and kept the same in the shelf innocently and no criminality can be attributed to him unless and until there is consensus between A.1 and A.2 in the alleged crime. Further more, A.2 is not a public servant. He is a person who has come to the appellant office to do some errand job. The presence of the defacto complainant - P.W.2 on 29.07.2002 in the morning at the office of the appellant cannot be doubted because, the notice - Ex.P.4 and the fee receipt of Rs.105/- - Ex.P.2, indicate that in response to the notice Ex.P.4, P.W.2 gone to the appellant office and has remitted the the required fees in the appellant office and in furtherance to that, the appellant has also prepared the verification certificate and kept ready. Therefore, the alibi pleaded by the appellant/A.1 that he was not in the office till 2.15 pm on the occurrence day, is not believable. He should have been in the office in the morning and left the office for other duty and returned to the office before 17.00 ours on 29.07.2002.

20.The charge has been rightly framed for the demand of bribe money at 17.00 hours on 29.07.2002. The evidence of D.W.1 does not indicate that the appellant was not in the office or scene of occurrence at 17.00 hours on 29.07.2002. Therefore, the explanation offered by the appellant is does not rebut the statutory presumption under Section 20 of the Prevention of Corruption Act.

21.For the reasons stated above, this Court does not find any error or irregularity in the judgment of the trial Court. Hence, the Criminal Appeal is liable to be dismissed.

22.In the result, the Criminal Appeal is dismissed thereby confirming the conviction and sentence imposed by the trial Court on the appellant/A.1. If the appellant/A.1 is on bail, the trial Court is directed to secure his presence and entrust him to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Special Judge,
(Special Court for Trial of cases
under the Prevention of Corruption Act), Salem.

2.The Inspector of Police,
Vigilance & Anti-Corruption, Salem.

3.The Public Prosecutor,
High Court, Madras.

+ 2 ccs to Mr. R. Bhagwat Krishna, Advocate Sr.67881

Crl.A.No.583 of 2015

SSI(CO)
EU(11/10/2017)