

Bail Slip

The appellant herein viz., K.Thambiraja, S/o.Kathan, (accused in Special Calendar Case No.2/13 on the file of the Sessions Judge, Karaikal) was directed to be release on bail as per order of this Court dated 30.09.2015 made in Crl.MP.No.1/15 in Crl.A.No.607/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 03.11.2016	Date of pronouncing Judgment 10.11.2017
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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.607 of 2015

K.Thambiraja
S/o.Kathan

... Appellant/Accused
Versus

State represented by
The Inspector of Police
Vigilance & Anti-Corruption
Pondicherry.

... Respondent/Complainant

Appeal filed u/s.374 (2) of Cr.P.C. r/w. 27 of the Prevention of Corruption Act, against the Judgment of conviction and sentence passed by the learned Sessions Judge, Karaikal, in Special Calendar Case No.2 of 2013 dated 11.09.2015.

For Appellant :

Mr.B.Kumar
Senior Counsel for
M/s.Usha Raman

For Respondent :

Mr.V.Balamurugan
Government Pleader (Pondicherry)

Judgment

The appellant is the sole accused in Special Calendar Case No.2 of 2013 on the file of the learned Sessions Judge, Karaikal and he stood charged for the offence under Sections 7 and 13(2) of the Prevention of Corruption Act. By judgment dated 11.09.2015, the trial court convicted him under both the above Sections and sentenced him to undergo rigorous imprisonment for two years under Section 13(2) of the Prevention of Corruption Act and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months. No separate sentence was imposed under Section 7 of the Prevention of Corruption Act. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

2. The case of the prosecution is that on 20.10.2011 at Traffic Police Station, Karaikal, the accused K.Thambiraja, H.C.1485 attached to Traffic Police Station, Karaikal received illegal gratification other than legal remuneration to a tune of Rs.4,200/- from one V.Kalaiselvam, an accused in Crime No.91 of 2011 under Sections 279 and 337 IPC of Traffic Police Station, Karaikal, for releasing him on station bail and for returning his motorcycle bearing Registration No.PY-02-J-3002 involved in the motor accident case and he also received illegal gratification of Rs.3,500/- from one S.Baskaran to release his son Asaithambi, an accused in Crime No.14 of 2010 under Sections 279 and 338 IPC of Traffic Police Station, Karaikal on station bail and for returning his motorcycle bearing Registration No.PY-02-D-9083 and further, he received illegal gratification of Rs.5,000/- from one Velmurugan, an accused in Crime No.84 of 2010 under Sections 279 and 337 IPC of Traffic Police Station, Karaikal, for releasing him on station bail and for returning his motorcycle bearing Registration No.PY-02-H-9001 and he also received an illegal gratification of Rs.7,000/- from one R.Muthamaizh, an accused in Crime No.104 of 2010 under Sections 279 and 338 IPC of Traffic Police Station, Karaikal, for releasing him on station bail and for returning his motorcycle bearing Registration No.PY-01-X-8021 as a reward for showing some favour to the said accused in the exercise of his official function and hence, the accused appears to have committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and also the accused herein was habitual in receiving bribe from other accused as a reward to show some favour as mentioned in Section 7 of the said Act and thereby, committed misconduct as defined under Section 13 and rendered himself liable to be punished under Section 13(2) of the Prevention of Corruption Act, 1988.

3. In order to prove the case of the prosecution, before the trial Court on the side of the prosecution, P.Ws.1 to 17 were examined and Exs.P1 to P19 have been marked. On the side of the defence, neither oral nor documentary evidence was adduced.

4. Having considered all the evidences, the Trial Court has come to the conclusion that the prosecution has proved its case beyond reasonable doubt and accordingly, sentenced him as above. Challenging the said conviction and sentence, the sole accused is before this Court.

5. Heard the learned Counsel for the appellant and the learned Government Pleader appearing for the State and also perused the documents available on record.

6. The learned counsel for the appellant would submit that there are four different incidents and all the four incidents cannot be clubbed together as per Section 219 Cr.P.C., however the trial Court framed charge in respect of all the four different occurrences on the complaints said to have been given by different individuals, which is against law.

7. The learned counsel for the appellant would also submit that except PW.2 - Kalaiselvam, all other witnesses have not supported the case of the prosecution. Evidence of PW.3 is only a hearsay evidence and his evidence cannot be considered. The other prosecution witnesses themselves have accepted that the evidence of PW.2 is false. When it was suggested to him that the complaint was given by him at the instance of an MLA, with whom the accused had feud, he answered in the affirmative, which shows that the complaint of PW.2 was motivated.

8. The learned counsel would further submit that the accused was not at all in the police station when the alleged demand of money by the accused, as alleged by PW.2. According to PW.2, police bail was between 6 p.m and 7.30 p.m., whereas according to PW.7, Sub-Inspector, on 17.08.2011 (the date of alleged occurrence), the accused was sent on rounds at 4.00 p.m and came back only at 9.00 p.m. and the same is entered in the General Diary maintained in the police station.

9. It is the further contention of the learned counsel for the appellant that it is not the duty of the accused to send the vehicle for brake test. In support of the said contention, he relied on the evidence of PW.7, wherein he has deposed that the accused came when he was in the police station and he entrusted the job to PW.8. PW.7 also admitted that he agrees with the suggestion that the accused has nothing to do with the sending of the vehicle for brake test or releasing PW.2 on station bail. PW.8 Narayanasamy, Head Constable also totally supports PW.7. P.Ws.16 and 17 also admit that the accused has nothing to do with the release of PW.2 on police bail. According to the appellant, he has not demanded any money and also none of the witnesses have supported the case of the prosecution and the accused has nothing to do with the releasing of defacto complainant on bail and also for releasing of the vehicle. Under the instigation of local MLA, false complaint has been lodged. In such circumstances, the learned counsel would submit that the appellant is entitled for order of acquittal.

10. The learned Government Pleader (Pondicherry) would submit that the four incidents are not clubbed together as stated by the learned counsel for the appellant, but there is only one occurrence, in which the defacto complainant Kalaiselvam involved in the accident and the injured person was

admitted in the hospital and complaint lodged against the said Kalaiselvam by the Traffic Police, Pondicherry, and in the said case, to release the defacto complainant Kalaiselvam on station bail, the accused demanded a sum of Rs.2,200/- from the defacto complainant and thereafter, the accused also demanded a sum of Rs.2,000/- for taking the vehicle for inspection by the Motor Vehicle Inspector and also for releasing the vehicle to the defacto complainant. The defacto complainant paid a sum of Rs.2,200/- as bribe and the accused released him on station bail, but did not release the vehicle. Therefore, the defacto complainant along with PW.6 - R.Sankar approached the local MLA for release of the vehicle and thereafter, they preferred a complaint before the Superintendent of Police, Vigilance and Anti-Corruption. Then due to the impact of the decision of the Hon'ble Supreme Court in Lalithakumari Case, preliminary enquiry was ordered by the Department and PW.15 - Mr.Saravanan, Inspector of Police was directed to enquire into the allegations and he conducted preliminary enquiry and filed a report (Ex.P13) that the preliminary enquiry revealed that the accused demanded money from the defacto complainant and also from 3 other persons. Based on the complaint given by PW.1 - Ramaraj, Superintendent of Police, PW.16 - Kumar, registered a case in Crime No.1 of 2012 under Sections 7 and 13(2) of the Prevention of Corruption Act and investigated the case and sent the case file to Chief Vigilance Officer for sanction of prosecution. PW.17 conducted further investigation and on enquiry, it was found that prima facie case was made out against the appellant and therefore, he laid charge sheet.

11. Point for consideration in this appeal is whether the judgment of the trial Court in awarding conviction and sentence is in order or liable to be set aside.

12. In this regard, since this Court, being the first appellate Court, is fact finding Court and therefore, it is necessary to re-appreciate the relevant oral and documentary evidence let in before the trial Court.

13. PW.1 Ramaraju, Retired Superintendent of Police has deposed that while he was officiating as Superintendent of Police, Vigilance and Anti-corruption, on 29.08.2011, one Kalaiselvan lodged a complaint against the accused; based on the same, he appointed one Saravanan, Inspector of Police to enquire into the allegations and the said Inspector of Police after conducting preliminary enquiry, filed a report (Ex.P13), which reveals that the accused demanded a sum of Rs.5,000/- as bribe from the complainant Kalaiselvan and received bribe of Rs.2,200/- for releasing the said Kalaiselvan on station bail and also demanded Rs.2,000/- for returning the vehicle involved in the accident case. PW.1 has further deposed that on

receiving sanction from the Chief Vigilance Officer, he lodged a complaint (Ex.P1) against the accused on 16.02.2012. Ex.P2 is the First Information Report and Ex.P3 is the Memorandum issued by the Under Secretary. PW.1 has further spoken about the bribe of Rs.5,000/- received by the accused from one Velmurugan.

14. PW.2 Kalaiselvam (defacto complainant) has spoken about the involvement of himself and his vehicle in the accident took place on 15.08.2011. He further deposed that when he went to the Traffic Police Station, Karaikal, the accused demanded Rs.2,000/- as bribe for releasing him on bail and he gave the money and the accused again demanded Rs.2,000/- for taking the vehicle for inspection and for returning the vehicle and since he did not have sufficient money to pay the bribe amount, he offered his cellphone in lieu of money for taking the vehicle for inspection, but no inspection was conducted and the accused has returned back the cellphone, but did not return the motorcycle. Therefore, he and his brother-in-law Sankar went to the Office of Senior Superintendent of Police, Karaikal and lodged a complaint, based on which, action was taken to send his vehicle for inspection and the vehicle was handed over to him.

15. PW.3 Segaran has deposed that on receiving a phone call from PW.2 that his vehicle met with an accident, for which bail has to be taken, PW.3 went to the Traffic Police Station, Karaikal and signed as surety and he was told that the accused demanded a sum of Rs.2,000/- from PW.2 for releasing him on station bail.

16. The defacto complainant (PW.2) met with an accident and at that time, the accused as a Head Constable, recorded the statement of the victims in the accident and then informed to the Traffic Police Station and demanded bribe for releasing the defacto complainant and his vehicle. PW.3 has spoken about the alleged demand made by the accused. PW.3 supported the demand of money by the accused for releasing PW.2 on bail, but the rest of the things are not supported by PW.3, therefore, he was declared as hostile. It is well settled proposition of law that even if the witness was turned hostile, his evidence need not be discarded entirely. Though the evidence of PW.3 regarding demand of bribe by the accused from PW.2, is only a hearsay evidence, PW.2 is the defacto complainant and he has spoken about the demand made by the accused for releasing him on bail. Prosecution has examined PW.3 only for the purpose of corroboration and therefore, his evidence cannot be treated as hearsay evidence. Further P.Ws.3, 4 and 5 have stated that they went to the Traffic Police Station and put their signatures as surety for releasing the defacto complainant. Even, the Crime No.1 of 2012 on the file of Traffic Police Station, Karaikal, shows that the defeacto complainant and his vehicle had involved

in the accident and the vehicle was seized and a case was registered against the defacto complainant in the Traffic Police Station, Karaikal. Therefore, to release the defacto complainant on station bail, P.Ws.3, 4 and 5 went to the police station and put their signatures for releasing the defacto complainant. When there is no dispute that the defacto complainant (PW.2) had involved in the accident, the evidence of PW.6 shows that after releasing the defacto complainant (PW.2) on station bail, he asked to release his vehicle. At that time, the accused demanded a sum of Rs.2,000/- for releasing the vehicle. For which, PW.6 stated that they did not pay the demanded money, but they met MLA and as the MLA directed to approach the higher authorities, they (P.Ws.2 and 6) approached Superintendent of Police and gave complaint. The records reveal that based on the complaint given by PW.2 and the same was corroborated by PW.6, preliminary enquiry was conducted by Mr.Saravanan, and as the prima facie case was made out, charge sheet was filed against the accused. Though P.Ws.3, 4 and 5 were declared as hostile witnesses, their evidences to the extent that the defacto complainant had involved in the accident and subsequently, he surrendered before the Traffic Police Station, Karaikal and they signed as surety for releasing the defacto complainant, cannot be discarded. As far as the demand of bribe for releasing the vehicle is concerned, PW.3 did not support the case of the defacto complainant, but PW.6 has spoken about the same. During the preliminary enquiry, it was also enquired about, what are the other cases, in which this accused registered FIR. While examining those persons against whom FIR was registered by the accused, four persons (apart from PW.2, the other three persons are P.Ws.9, 10 and 11) have stated before the Enquiry Officer in the preliminary enquiry that the accused demanded bribe from them also. But P.Ws.9, 10 and 11, while examining before the trial Court as witnesses in this case, have not supported the case of the prosecution. Since because P.Ws.9, 10 and 11 have not supported the case of the prosecution before the trial Court during trial, the complaint given by PW.2 cannot be said as false. Therefore, from the evidences of P.Ws.2 and 3 and also some extent the evidences of P.Ws.4,5 and 6 even P.Ws.7, 12, 13, 15 and 16, it is clear that the accused has demanded bribe from PW.2- defacto complainant to release him on station bail. Though the learned counsel for the appellant would submit that the appellant is nothing to do with the release of a person - defacto complainant and also the release of vehicle, whereas PW.7 has stated that the accused only informed him about the said accident and also informed about the surrender of the accused in the Traffic Police Station, Karaikal. Though the learned counsel for the appellant would attempt to say that at the time when the defacto complainant surrendered before the Traffic Police Station, the accused was not in police station and he was somewhere else on

duty, but the evidence of PW.7 clearly shows that the accused only informed about the accident committed by the defacto complainant and also surrender. Though they have stated that he intimated P.W.8 to release him on bail after completing the formalities, it does not mean that the accused has not demanded bribe from the defacto complainant. The evidence of PW.2 that the accused demanded bribe for releasing him on station bail, was corroborated by the evidence of PW.3. Similarly, the evidence of PW.2 that the accused demanded bribe for releasing his vehicle was corroborated by the evidence of PW.6. Even though, the learned counsel for the appellant would contend that the accused is nothing to do with the release of a person - defacto complainant and also the release of vehicle and the said work was not entrusted to him and therefore, the allegation of demand of bribe does not arise, the said contention cannot be accepted for the reason that the public may not know who is competent person to release and to whom the particular work was allotted. Further, the records reveal that the accused only registered the concerned FIR and recorded the statement from the victim. Therefore, the contention of the counsel for the appellant has not helpful to the case of the defence.

17. The learned counsel for the appellant relied on the following decisions in support of his case:-

- (i) 2011 (2) MWN (Cr.) 47 (J.Duraimunusamy ..vs.. State by the Additional Superintendent of Police, CBI : SPE : ACB, Chennai -6);
- (ii) 2003 (2) MWN Cr. D.B. 69 (Solaiappa Gounder & Others ..vs.. State of Tamil Nadu, represented by Inspector of Police, Podanur, Coimbatore District);
- (iii) 2010 (1) LW (Crl.) 330 : 2010 SCC Online Mad.1417 (Sekaran ..vs.. State by Inspector of Police, K.V.Kuppam Police Station, Vellore District);
- (iv) 2009 (15) SCC 200 (State of Maharashtra ..vs.. Dnyaneshwar Laxman Rao Wankhede);
- (v) 2015 -2- LW (Crl.) 116 (R.Sasidaran @ Sasi ..vs.. The State represented by the Inspector of Police, Vigilance and Anti-Corruption, Nagercoil);
- (vi) 2015 -2- LW (Crl.) 74 (T.Ganesan ..vs.. State represented by the Inspector of Police, Vigilance and Anti-Corruption, Nagercoil);
- (vii) 2009 (6) SCC 587 (A.Subair ..vs.. State of Kerala)
- (viii) 2009 (3) SCC 779 (C.M.Girish Babu ..vs.. CBI, Cochin, High Court of Kerala); and
- (ix) 2016 (3) SCC 108 (Krishan Chander ..vs.. State of Delhi).

18. The learned Government Pleader (Pondicherry) relied on the following decisions in support of the prosecution case:-

- (i) AIR 1962 SC 1153 (State of Bombay (now Maharashtra) ..vs.. Umarsaheb Buransaheb Inamdar and others); and

(ii) 2010 Cr1.L.J. 4450 (Main Pal ..vs.. State of Haryana).

19. There is no quarrel with the propositions laid down in the above said decisions. The facts and circumstances involved in those cases are not identical to the facts of the present case and the facts and circumstance of the present case is entirely different from those cases. Therefore, the decisions relied on by the learned counsel for the appellant are not applicable to the present case.

20. On careful perusal of the evidence of PW.7, PW.15 and Ex.P13 the preliminary enquiry report reveal that the accused one who received intimation from the hospital regarding the accident and the victim was admitted in the hospital, immediately he proceeded to the hospital and recorded statements from the victim in the hospital and also from the defacto complainant, and registered the FIR in Crime No.91 of 2011 on the file of Traffic Police Station, Karaikal. Further, it is revealed that the accused demanded bribe from the defacto complainant and through preliminary enquiry, the department also came to the conclusion that prima facie case is made out and after investigation, they laid charge sheet against the accused and the prosecution has also clearly proved its case before the trial Court through oral and documentary evidence. On careful analysis of the material records placed before this Court, this Court is of the view that demand and acceptance were proved beyond all reasonable doubt and the trial Court has also rightly come to the conclusion that the accused demanded bribe from the defacto complainant and convicted him under Sections 7 and 13(2) of the Prevention of Corruption Act, and there is no reason to interfere with the conviction and sentence passed by the trial Court.

21. In the result, the Criminal Appeal stands dismissed and the conviction and sentence passed by the learned Sessions Judge, Karaikal, in Special Calendar Case No.2 of 2013 dated 11.09.2015 is hereby confirmed. The period of sentence already undergone, if any, by the appellant / sole accused shall be set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of the sentence.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Karaikal.
2. The III Additional Sessions Judge, Karaikal
3. The Inspector of Police
Vigilance and Anti-Corruption
Karaikal.
4. The Public Prosecutor,
Pondicherry.
5. The Seciton Officer,
Criminal Section,
High Court, Madras 104.

+lcc to Mrs.Usha Raman, Advocate Sr.No.79934/17

Judgment in
Crl.A.No.607 of 2015

KGK(CO)
sm:4.12.2017



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