IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2017

Pronounced on : 12.09.2017

Coram

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.1125 of 2007

A.V.Moorthy .. Appellant

/versus/

The State of Tamil Nadu,
Represented by the
Inspector of Police,
Vigilance and Anti Corruption,
City-II, Detachment,
Chennai 20
(Cr.No.1/Ac/2000/CC-II) ..Respondent

Criminal Appeal has been filed under Section 274(2) of the Code of Criminal Preceding 1973, r/w Section 27 of the Prevention of Corruption Act, 1988 praying to set aside the conviction and sentence passed in the judgment dated 10.12.2007 made in C.C.No.3 of 2001 on the file of the Court of the III Additional Sessions Judge cum Special Judge, Chennai 104 and allow this Criminal Appeal and acquit the appellant/accused.

For appellant : Mr.S.Karthikeyan

For Respondent : Mr.R.Ravichandran,
G.A.(Crl.Side)

JUDGMENT

The appellant herein was tried for the offence under Sections 7 and 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 and found guilty. Challenging the conviction and sentence, the present appeal is filed.

2. The Substratum of charges against the appellant is that, when he was working as Foreman in Tamil Nadu Electricity Board, Office of the Assistant Engineer (O &M), at Chinmaya Nagar Section, Chennai 92 on 04.01.2000, at or about 10.30 hrs., he demanded a sum of Rs.1000/- from one Ayyanar(PW2) to give new electricity service connection to his house and shops. Pursuant to the said demand, on 05.01.2000 at 17.10 hrs., he accepted a sum of Rs.1000/- from the said Ayyanar as an illegal gratification. Since the said Ayyanar was not inclined to give any illegal gratification, he has approached the respondent police and given a complaint about the demand of illegal gratification and agreed to act as decoy. On registering the complaint, the respondent police has smeared the currency with phenolphthalein and laid trap. The accused received the tainted money from the defacto complainant and the same has been seized from the accused, immediately after he accepted the tainted money. Thus, the final report has been filed against the appellant herein and charges were framed as stated above.

3. To prove the case, the prosecution has examined 10 witnesses and marked 15 documents and also 5 material objects. On behalf of the appellant, 4 defence exhibits were marked. The trial Court, after appreciating the evidences let in by the prosecution as well as the defence, has held the appellant guilty of demanding and receiving illegal gratification of Rs.1000/- from the defacto complainant-PW2 and sentenced him to undergo 2 years Rigorous Imprisonment and imposed fine of Rs.5,000/-, I/d to undergo 3 months Simple Imprisonment for the offence under Section 7 and sentenced to undergo 2 years Rigorous Imprisonment and imposed a fine of Rs.5000/- I/d to undergo 3 months Simple Imprisonment for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

4. The learned counsel appearing for the appellant submitted that the trial court has failed to appreciate both the oral and documentary evidence in proper perspective and erred in convicting the appellant herein. The witnesses let in by the prosecution are not credible witnesses. The sanction order to prosecute the appellant itself bristles with infirmity. Admittedly, PW1-sanctioning authority has not applied his mind while according sanction for the prosecution.

5. Apart from the sanction order marked as Ex.P1, two more sanction orders signed by the witnesses were available in the case file and the same have been marked as Exs.D3 and D4, which clearly indicate that the sanction order has been issued mechanically without application of mind for more than one occasion. The evidence relied on by the appellant to show that he was not present at the scene of occurrence on the date and time as alleged by the prosecution, has not been properly appreciated by the trial Court. On the alleged date of demand i.e., 04.01.2000 and 05.01.2000, the appellant was not at all in the office and the same has been elucidated during the examination of PW8[Umasankar] and PW9[Shanmugam], who have deposed that on those days, the appellant-accused was on Other Duty to attend funeral of one of his colleagues. This part of the deposition of the prosecution witnesses along with Ex.P10-Job Allocation Register, which indicates the application of service connection of the defacto complainant-PW2 was not dealt by the appellant, but by some other officer disprove the prosecution case. The contradiction found in the time of registering the First Information Report as found in the document vis-a-vis the ocular evidence of defence witness belied the case of the prosecution. The trial Court ought not to have relied upon the doubtful and interested witness namely, PW2[Ayyanar] to convict the appellant. While the appellant is not the authorized person to give service connection, the allegation that he demanded and accepted the money from the defacto complainant to give service connection

itself is contrary to the fact. Further, from the prosecution evidence, it has been established that new service connection can be given only after the consumer obtained test report from the Licensed Electrician. In the present case, the test report from the Licensed Electrician was obtained by the consumer only on 06.01.2000. Therefore, there is no truth in the case of the prosecution that the appellant demanded money to give service connection on 05.01.2000, when the test report was ready only on 06.01.2000. The prosecution witness namely PW4-[T.V.P.Lakshmanan] who accompanied the defacto complainant to oversee the demand and acceptance of illegal gratification has not supported the prosecution and treated as hostile witness. Thus, the sole evidence of interested witness namely, defacto complainant[PW2] cannot be a basis for conviction.

6. The learned Government Advocate (Crl.Side) representing the State submitted that the consumer Ayyanar submitted his application for service connection during the month of December 1999 and he was asked to deposit Rs.2250/- for the shops and Rs.3390/- for the residence. Accordingly, he made payment on 09.12.1999 and the receipts are marked as Exs.P2 and P5 respectively. Thereafter, when the consumer met with the accused/appellant on 29.12.1999, the accused/appellant demanded a sum of Rs.1000/- as bribe to provide service connection. Again, the illegal demand has been made by the accused/appellant on 04.01.2000. This has prompted the consumer to lodge the

complaint before the respondent-police and after verifying the veracity of the complaint, a trap was laid by the respondent police on 05.01.2000. The defacto complainant was sent along with an independent witness PW4 [T.V.P.Lakshmanan] to oversee the transaction. The appellant herein had demanded the illegal gratification on 05.01.2000 also and on tendering money, he has received the money and kept the tainted money on his left side shirt pocket. The Trap Laying Officer recovered the tainted money from the accused/appellant in the presence of the witnesses. Since the prosecution has proved the case of illegal demand and acceptance of money through the witnesses of PW2[Ayyanar/defacto complainant]; PW3[Senthilkumar] and PW4[T.V.P.Lakshmanan], the presumption under Section 20 of the Prevention of Corruption Act, 1988 squarely applies. Therefore, there is no error in the judgment of the trial Court, which requires interference.

7. From the deposition of the prosecution witnesses, this Court finds that PW2-Ayyanar had purchased a vacant site in the year 1994 and he has put up a construction for shop and residential unit. He applied for electricity service connection and had made necessary deposits. His applications are marked as Exs.P3 and P4 respectively. The deposit receipts are marked as Exs.P2 and P5 respectively. He had approached the appellant herein on different dates and the appellant told that he has to pay a sum of Rs.1000/- as bribe to get service

connection. According to the prosecution witness, on 04.01.2000, when he went to the Electricity Board Office, the appellant/accused demanded a sum of Rs.1000/- to give new service connection. Therefore, he has gone to Vigilance and Anti-Corruption Office at Adyar, on advise given by one of the consumers and he has given the complaint, which was marked as Ex.P6. As a defence, the accused/appellant contended that on 04.01.2000 and 05.01.2000, he was not in the office, since one of his office colleagues died on 04.01.2000, as a representative of the staff members, he was asked to attend funeral and give funeral expenses to bereaved family. Hence, after signing the attendance register, on 04.01.2000 and 05.01.2000, he went to attend the funeral.

8. To substantiate the said defence, the evidence of PW8[UmaSankar] and the evidence of P9[Shanmugam] are relied on by the appellant. During the cross examination of both PW8[Uma Shankar] and PW9[Shanmugam], who were working as Assistant Engineers of Tamil Nadu Electricity Board in the office of the appellant/accused at the relevant point of time and admit in the cross examination that on 04.01.2000 and 05.01.2000, the accused/appellant was sent to help the bereaved family. However, this part of evidence does not over weigh the evidences of PW2 [Ayyanar], PW3 [Senthilkumar] and PW4 [T.V.P.Lakshmanan] , who have deposed about the presence of the accused in the office and receipt of the tainted money from PW2[Ayyanar]. Further, the

seizure mahazar-Ex.P11 indicates that it was preferred on 05.30 p.m., and completed at 08.00 p.m., on 05.01.2000. It narrates the entire process of seizure, which commenced from 05.30 pm., on 05.01.2000. In the said mahazar, the accused has affixed his signature acknowledging the receipt of the mahazar copy. The attendance register relied on by the appellant is the ocular evidence of PW8[Umasankar] and PW9[Shanmugam] and it does not help the case of the defence that he was not at all present either on 04.01.2000 or 05.01.2000. In the absence of any further detail about the employee who died in harness and where the funeral took place, a bald statement of his colleagues PW8[Umasankar] and PW9[Shanmugam] that the appellant was sent to attend funeral on behalf of the other staff, is not sufficient to presume any alibi. Contrary to the document evidence namely, the attendance register marked as Ex.P9.

9. While demand and acceptance have been spoken to by PW2[Ayyanar] and PW3[Senthilkumar], the recovery of tainted money from the possession of the accused immediately after the acceptance, is spoken to by PW3[Senthilkumar] and PW4[T.V.P.Lakshmanan]. The prosecution has treated PW4[T.V.P.Lakshmanan] as a hostile witness, but his evidence on the whole regarding the recovery of money is not impeached. Since the witness-PW4[T.V.P.Lakshmanan] is not able to speak about the events in seriatim, more

particularly, about the phenolphthalein test, the prosecution witness PW4[T.V.P.Lakshmanan] is treated as hostile witness. However, nothing is impeached to disbelieve his evidence regarding recovery of tainted money from the accused.

10. Section 20 of the Prevention of Corruption Act, 1988 mandates the presumption against the public servant, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section(1) of Section 13. Such presumption could be drawn, if the demand and acceptance of illegal gratification is proved. Once the said facts are proved, inference to be drawn that the said gratification is a motive or reward for doing or forbearing to do any official act.

11. In the Judgment of the Hon'ble Supreme Court in ***Mukhtiar Singh v. State of Punjab reported in 2016 Crl.L.J. 4191***, wherein para 18 reads as under:

> "18. It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act. In the light of our own re-appraisal of the evidence and keeping in view the above

> said principle in mind, we have also come to a conclusion that twin requirements of demand and acceptance of illegal gratification were proved in the case on hand on the basis of evidence adduced by the prosecution against the appellant and hence, the appellant was rightly convicted and sentenced for the offences punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Act."

12. Apart from making a vain attempt of alibi, the appellant has also tried to attack the veracity of the prosecution case on the ground that the defacto complainant had no title over the property for which he has sought for service connection and therefore, in the Job Allocation Register-Ex.P10, it has been specifically stated that there is a service dispute in his case. The defacto complainant in order to short circuit the enquiry regarding his title over the property, has given this complaint and by threat of prosecution he has obtained the service connection. This theory is unsustainable for the simple reason that if the defacto complainant had no title over the property, then the Department should not have accepted the caution deposit of Rs.3990/- for the shops and Rs.2250 for the residence as early as 09.12.1999. It is admitted by the Electricity Board Official that service connection is given subsequent to the trap proceedings. The factum of collecting the caution deposit and later providing service falsifies the entry made in Ex.P10.

13. As said by the Hon'ble Supreme Court, when there is a specific and positive evidence let in by the prosecution, which proves the demand and acceptance of tainted money as reward or motive to do the official act namely, to give service connection to the defacto complainant, the plea of the accused/appellant that the prosecution case is to be rejected on the ground of improbables, does not arise.

14. To reiterate again the reliance of Ex.P10-Entry in the Job Allocation Register and Ex.P9-Entry in the Attendance Register does not help the case of defence. While in the attendance register the accused has marked his presence on 04.01.2000 and 05.01.2000, the oral evidence is contrary to the entry made in the attendance register. Moreover, in the absence of detail about the staff, who died, his explanation cannot be taken as a true explanation to infer that the accused was not present in the event on 04.01.2000 and 05.01.2000.

15. On perusal of Ex.P10-Job Allocation Register, this Court finds that apart from the name of staff including the accused/appellant, certain jobs are written against the name wherein 15A Vedaponniamman Nagar service dispute is also written. This does not give any scope to presume that the request of the defacto complainant to give service connection to his buildings was indispute. If it is so, the department could not have collected caution deposit from the defacto

complainant. If the dispute had come to light subsequent to the receipt of the caution deposit, they could have return the money collected. Contrarily, in this case, the service connection has been given, after the Trap Laying proceedings. Therefore, this defence does not provide any justification for the receipt of the tainted money.

16. Hence, this Court finds no error in the finding of the trial Court and the Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant by the trial Court are hereby confirmed.

12.09.2017

Index:Yes/No
Internet:Yes/No
Speaking order/Non speaking order
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To
The II Additional Sessions Judge cum Special Judge, Chennai.
The Public Prosecutor, High Court, Chennai.

Dr.G.Jayachandran, J.

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Pre-delivery judgment made in Crl.A.No.1125 of 2007

12.09.2017