

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on :04.10.2017****Pronounced on :23.10.2017****Coram****The Hon'ble Dr.Justice G.Jayachandran****Criminal Appeal No.172 of 2010**

Kaliyan

.. Appellant/Accused

/versus/

State rep.by the Inspector of Police,
SPE, CBI:ACB, Chennai.
Respondent/Complainant

..

Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code against the order of conviction and sentence and fine ordered by the learned II Additional District Judge/Special Judge for CBI Cases, Coimbatore, in C.C.No.4 of 2008 dated 5.3.2010.

For Appellant : Mr.V.Gopinath, Sr.Counsel for
Mr.L.Mahendran.

For Respondent : Mr.K.Srinivasan, Spl.PP for CBI

J U D G M E N T

This Criminal Appeal is directed against the judgment of conviction passed by the trial court against the appellant for the offence under section 7 and 13(2) r/s 13(1)(d) of Prevention of Corruption Act, 1988.

2. The First Information Report was registered against the accused on 5.8.2008 by the Inspector of Police, CBI, ACB, Chennai based on the complaint by Tmt. Nalani, Director, M/s Coimbatore Auto Texmet Alloys Private Limited that the appellant demand bribe of Rs 50,000/- to process her application for enhancement of cash credit limit from Rs 70,000/- to Rs 1,00,00,000/- As a follow up, trap was laid and Rs 50,000/- smeared with phenolphthalein was recovered from the accused/appellant on 5.8.2008 in the presence of witnesses.

3. On completion of investigation and after obtaining sanction to prosecute the appellant/accused from the General Manager who is the competent authority to accord sanction, final report was laid against the accused/appellant for offences under section 7 and 13(1)(d) of the prevention of corruption Act.

4. The trial court has tried the accused for the said charges. The

prosecution has examined 8 witnesses, 23 exhibits and 3 material objects. In defence, in addition to the written statement one witness and 3 exhibits were marked.

5. As per the prosecution, M/s Coimbatore Auto Textmet Alloys Private Limited is one of the customer of Indian Overseas Bank, Karamadai Branch in which the appellant / accused was the Chief Manager of that Branch. The above said company had cash credit facility to a tune of Rs 70 lakhs. To develop their business one of its director Mrs. Nalani gave an application on 11.07.2008 for enhancement of Cash credit limit from rupees 70,00,000/- to 100,00,000/- lakhs. When Tmt. Nalani met the appellant/accused on 4.8.2008 and enquired about her application, the accused demanded bribe of Rs 50,000/- to enhance the cash credit limit. Since Smt. Nalani was not inclined to give bribe, she contacted CBI office at Chennai and reported about the matter.

6. The next day, (5.08.2008) Thiru. Prabakaran, Inspector, CBI, Chennai came down to Coimbatore, met the defacto complainant Nalani and other witnesses at Cheran Towers, Coimbatore. Being satisfied with the genuineness of the complaint he arranged for trap, demonstrated phenolphthalein test and its significance to the witnesses, smeared phenolphthalein powder on the currency and the

window cover in which the currency was kept and proceeded to IOB, Karamadai Branch. The accused who was in his cabin, demanded and received the money from the defacto complainant and kept it in the left side drawer of his table. This was witnessed by N.Manoharan the shadow witness. On receipt of the pre arranged signal from the defacto complainant, by whipping her face, the trap laying team entered the cabin of the appellant/accused. Recovered the tainted money and also seized the file connected with the application of the defacto complainant company. The hand wash samples were collected in two different bottles sealed and seized.

7. To prove the above version, the prosecution has relied upon the evidence of the defacto complainant Nalani, her husband Dhanraj, the shadow witness Manoharan and the trap laying officer Prabakaran who were examined as PW-3, PW-4, PW-5 and PW-7 respectively. Apart from these witnesses, PW-1 the officer who accorded sanction to prosecute the accused, PW-2 who has furnished the service particulars of the accused, PW-6 Manager of IOB, Karamadai branch were also examined. 23 documents are relied by the prosecution. The remnant samples and currencies recovered from the accused were marked as M.O. 1 to M.O.3.

8. To prove his innocence, the accused has examined Mr. Ganeshamoorthy as DW-1 and 3 exhibits were marked. However, the

<http://www.judis.nic.in> explanation of the accused has not found favour by the trial court

sufficient to discredit the case of the prosecution.

9. The trial court has held that, the demand of bribe by the accused on 4.8.2008 is proved through the evidence of PW-3 and her complaint Ex P-8 which inspires confidence. The recovery of window cover containing currency smeared with phenolphthalein and the change of colour after dip of the accused hand in the colourless sodium carbonate solution indicates presence of phenolphthalein in the hand wash of the accused/appellant which proves the acceptance of bribe from PW-3 on 5.8.08 hence the accused is guilty of offences under section 7 and 13(1)(d) of Prevention of Corruption Act, 1988 and has imposed sentence of One year R.I and fine of Rs. 1000/- for each of the offences.

10. The Learned counsel for the appellant submitted that, the prosecution has neither proved the demand or the acceptance of bribe. The trial court has wrongly presumed the demand and acceptance solely based on the uncorroborated evidence of PW-3 who had grudge over the appellant for warning her to maintain credit discipline and refused to enhance the credit facility beyond 70 lakhs unless her company stop drawing more than the credit limit. The facts elucidated through the prosecution witnessed PW-1, PW-6 and DW-1 in this regard were not at all taken note by the trial court in spite of the

admission of the defacto complainant that her company has breached the credit limit on several occasion and was sought explanation by the bank through Ex P-17 dated 11.07.2008.

11. The further case of the appellant is that, the contradictory version of the witnesses regarding the manner in which the tainted money recovered from the accused has not been considered by the trial court. While the hand wash of the accused in the sodium carbonate solution didnot change colour, a different set of sample has been forwarded by the prosecution for the laboratory. The trap laying officer admission that he didnot get the signature of the accused on the lable of M.O.1 and M.O. 2 alleged to contain the accused hand wash solution fortifies the said averment. The report given by the chemical analyst ought not to have been admitted under Section 293 Cr.P.C without examing the chemical analyst who has given the report Ex P-3 and P-4. This has gravely prejudiced the accused. The manner in which the reports of the expert admitted into evidence under section 293 Cr.P.C without notice to the accused is unfair and improper. Moreso, when no incriminating question posed to the accused under section 313 of Cr.P.C about the chemical analyst report.

12. The Learned Special Public Prosecutor appearing for the

<http://www.judis.nic.in> respondent contented that, the trial court has fairly considered the

evidence let in by both the prosecution and the defence. After weighing the evidence has found that the contradictions pointed out are very trivial and does not go to the root of the matter. The overwhelming evidence points out that the accused as Branch Manager wanted to obtain pecuniary advantage by abusing his position and demanded bribe of Rs 50,000/- from PW-3 to enhance the cash credit limit from 70 lakhs to 100 lakhs. The complaint Ex P-3 read with the deposition of PW-3 has rightly inspired the confidence of the court about the demand on 4.8.2008. The acceptance is proved beyond doubt by recovery and chemical analyst report. Hence the burden to rebut the presumption lies on the accused which he has failed to discharge. The trial court, had considered the defence explanation and contradictions pointed by the defence has rightly concluded that those contradictions and inconsistencies does not affect the credibility of PW-3 and other witness. Hence he submitted that, the judgment of the trial court is factually and legally correct and warrants no interference in the appeal.

13. Point of determination:

Whether the explanation of the defence probablize innocence and sufficient to discredit the prosecution evidence ?

14. The defacto complainant had given application for cash credit

enhancement to one crore rupees on 11.07.2008 and pursuant to her

application on the same day the accused has written a letter seeking certain clarification. In response, PW-3 company has given its explanation with additional documents on 26.07.2008. Ex P-6, P-17 and Ex P-7 are the relevant documents which speaks about the above facts. It is candidly admitted by the defacto complainant that contrary to the terms of cash credit facility, the defacto complainant were utilizing the money to honour their personal cheques and over and above the permitted credit limit. From the evidence of PW-6, the Manager of the Bank, it is elucidated that on 4.8.08 she and the accused had inspected the defacto complainant company. The defacto complainant didnot turn up. The Status report of the DW-1 dated 11.08.2008 marked as EX D-3 indicates excess drawing by the defacto complainant company in the past one year on all days except 5 days, cheques to private banks for re-payment of their borrowings and frequent dishonour of cheques. The same view has been expressed by the defacto complainant on 18.06.2008 in his letter to the defacto complaiant and sought to adhere credit discipline.

15. In the light of the above facts, the explanation of the appellant that his instruction to PW-3 to adhere credit discipline and return of five cheques of the defacto complainant company between 2.8.08 and 5.8.09 for want of fund, since it was issued above the credit limit has infuriated PW-3 and PW-4 resulting in false complaint

<http://www.judis.nic.in> appears to be probable. The trial court ought to have given due

consideration of his defence while appreciating the evidence. But, reading of the trial court judgement clearly show that it has not considered the evidence let in by the accused in this regard . When the evidence of PW-3 is uncorroborated on various facts and also bristles with contradictions, the trial court has surprisingly held that her evidence inspires its confidence.

16. The trial court to disregard the contradictions crept in the prosecution evidence has referred the following passage of Justice V.R.Krishnaiyer in **Narotam Singh -vs-State of Punjab reported in AIR 1978 SC 1543**, held as follows:-

" Discrepancies do not necessarily demolish testimony; delay does not necessarily spell unverity and tortured technicalities do not necessarily upset conviction when the Court has had a perspicacious, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing peccadilloes and peripheral probative shortfalls. The "sacred cows" of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home."

17. The contradictory versions of PW-3, PW-5 and PW-7 over the manner in which the cover containing tainted money recovered from the accused is not a marginal mistake but goes to the root of the

prosecution case. The discrepancies if properly looked at, the evidence of PW-3 will be uninspiring. More so when the shadow witness PW-5 admits that he did not over-hear what transpired between PW-3 and the accused at that time.

18. While PW-3 has deposed that PW-7 trap laying officer conducted search of the accused body and recovered a driving license and some money, thereafter asked the accused to dip his hand in the sodium carbonate solution to find out phenolphthalein presence. After confirming collecting the hand wash solution, the Trap laying officer enquired about the bribe and recovered the cover containing tainted currency of Rs 50,000/- from the left side drawer. Whereas PW-5 the shadow witness has deposed that first PW-7 asked the accused to handover what all he is having with him. The accused handed over his driving license and some cash. Next, conducted phenolphthalein test and lastly recovered the tainted money. Whereas the trap laying officer has deposed that he first conducted phenolphthalein test on the hands of the accused, then made body search of the accused recovered his driving license and cash of Rs 6,300/- from his possession and thereafter asked the accused to hand over the bribe money he received from PW-3. The accused took out the cover from his left side table drawer and handed out it.

19. Thus, the contradictions give room to doubt whether the

<http://www.judis.nic.in> phenolphthalein test was conducted prior to body search or after body

search. Whether the accused was asked to handle any of the material with him or kept on his table before phenolphthalein test or whether the trap laying officer while conducting search of the accused body had contacted the hand of the accused before the accused hands were subjected to phenolphthalein test.

20. Regarding demand and acceptance, the accused in his defence statement has said that , PW-3 dropped a cover in his table drawer and left his room abruptly. Before he could realise it, many men swarmed into his room and asked him to take the envelope . So he took the envelope in his left hand, crossed over to his right hand and gave it to them. His explanation read in isolation may appear to be less convincing , but the inconsistency among the witnesses regarding what happened in the accused cabin which has been narrated above, makes his case probable coupled with the fact of animosity between the accused and the defacto complainant.

21. Regarding recovery of tainted money, the lapse on the part of the trap laying officer to obtain the signature of the accused on the label of the sample solution sent to the laboratory and the manner in which Ex P-3 and P-4 the forensic laboratory letter and report taken into evidence without memo from the prosecution or notice to the accused coupled with the failure to put incriminating question about this documents to the accused under section 313 of Cr.P.C discredits

22. The trial court in its zeal to convict the accused has miserably failed to see the material contradictions and evidence let in by the defence. The trial court has heavily relied upon the motivated and interested witness PW-3, to base the conviction without any corroboration. Further the trial court has erred in holding that recovery of tainted money from the table drawer of the accused is proof of demand and acceptance of bribe money. This observation of the trial court is contrary to law and fact. Demand and acceptance cannot be presumed solely based on recovery of tainted money. It has to be proved by the prosecution through direct and cogent evidence beyond reasonable doubt. In this case the demand and acceptance is not proved beyond reasonable doubt. Hence the trial court judgment is liable to be set aside.

23. Accordingly, for the reasons stated above, the appeal is allowed. The trial court judgment of conviction and sentence is set aside. As a result, the accused is set at liberty. Bail bond if any shall stand discharged. Fine amount if paid, shall be refunded to the appellant/accused.

23.10.2017

Index:yes/no

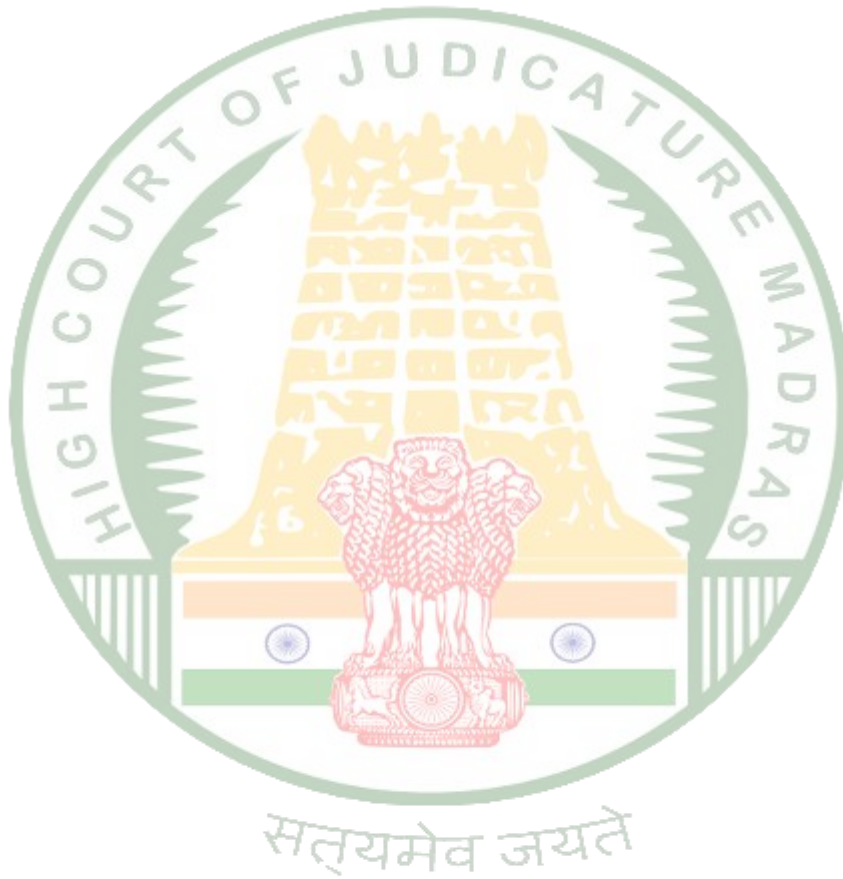
Internet:yes/no

Speaking order/Non speaking order

To

1.The Inspector of Police,
SPE, CBI:ACB, Chennai.

2.The learned Special Public Prosecutor, High Court, Madras.



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Dr.G.Jayachandran,J.

Ari/gr.



Pre-delivery judgment made in
Crl.A.No.172 of 2010

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