IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2017

Pronounced on : 22.09.2017

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

CrlA.No.10 of 2009

1.Peter Rajamanickam
2.M.Mohammed Yusuf .. Appellants

/versus/

State : rep.by
The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Branch,
3rd Floor, Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai 600 006.
R.C.No.39(a)/2004 ..Respondent

Criminal Appeal is filed under Section 374(2) of the Code of Criminal procedure 1973 and Under Section 27 of the Prevention of Corruption Act, 1988 praying to call for the records from the trial Court in C.C.No.5 of 2005 on the file of the Principal Special Judge for CBI Cases, Chennai 104, hear the counsel for the appellants, set aside the order of conviction and sentence passed against the appellants/accused Nos.1 and 2 in C.C.No.5 of 2005 dated 05.12.2008 by the Principal Special Judge for CBI Cases, Chennai 104, acquit the appellants/accused Nos.1 and 2.

For appellants	:	Mr. A.V.Somasundaram for M/s Lakshmipriya Associates
For Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor(CBI cases)

JUDGMENT

The appellants herein were tried for the offence under Section 120B r/w 7 and 120B r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and found them guilty of the said offences. The trial Court has convicted the first appellant for the offence under Section 120B IPC r/w 7 of Prevention of Corruption Act, 1988, to undergo RI for a period of 3 years and imposed a fine of Rs.1,00,000/-, i/d to undergo 9 months RI; and for the offence under Section 120B IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, to undergo 3 years RI and imposed to pay a fine of Rs.1,00,000/- i/d to undergo 9 months RI. No separate sentence for the other charges. Whereas the second appellant is concerned, the trial Court has convicted and sentenced him to undergo 1 year RI for the offence under Section 120B IPC r/w 7 of Preveniton of Corruption Act, 1988, and imposed to pay a fine of Rs.5,000/- i/d 3 months RI and to undergo 1 year RI for the offence under Section 120B r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and imposed to pay a fine of Rs.5,000/- i/d to undergo 3 months RI and the trial Court has also directed that the sentences to run concurrently.

2. The case of the prosecution is that while the first appellant namely, Peter Rajamanickam was working as a chief Commercial Clerk in Outward Parcel Office, Central Railway Station, Chennai, conspired with one M.Mohammed Yusuf the 2nd appellant to commit the offence of demand and acceptance of illegal gratification of Rs.2000/- as a motive or reward to send parcels of the defacto complainant Mr.Naveen Kumar to New Delhi on 11.06.2004 and pursuance to the said conspiracy, when the said Naveenkumar/defacto complainant came to the Railway Parcel Office on 10.06.2004 for booking 35 bundles of leather goods to be delivered at New Delhi, the first respondent was working as Chief Commercial Clerk demanded a sum of Rs.2,000/- as bribe. Since the employer of the defacto complainant viz., Mr.Syed Ahmed Masood was not willing to give any bribe to the accused, he lodged a complaint through his employee Mr.Naveen Kumar[defacto complainant] at the CBI on 11.06.2004.

3. Based on the complaint of the defacto complainant, the CBI has registered a regular case against the first appellant and thereafter, taken up the matter for investigation by arranging pre-trap proceedings in the presence of two independent witnesses and later on, proceeded to the Central Railway Station at about 08.20 p.m., on 11.06.2004, and reached

platform No.11 of the Central Railway Station at 08.50 p.m. The defacto complainant Mr.Naveen Kumar along with the accompanying witness Mr.Manokaran met A1[Mr.Peter Rajamanickam] at platforam No.11. When the first appellant Mr.Peter Rajamanickam enquired whether he has brought the money, the defacto complainant Mr.Naveen Kumar has handed over the cover containing tainted currency to the first appellant Mr.Peter Rajamanickam and and it was received by Mr.Peter Rajamanickam (A1) in his left hand and shifted the same to his right hand and handed it over to a person, who was standing nearby and identified later as Mr.Mohammed Yusuf (A2) and arrayed as the 2^{nd} accused for abetting A1. The second appellant herein received the cover from the first appellant and kept in his left side pant pocket.

4. On receiving the bribe, Mr.Naveen Kumar [PW5] gave the pre-arrange signal from the defacto complainant Mr.Naveen Kumar, the trap headed by Mr.R.Ravi, Inspector of Police, CBI, came to the first appellant and he has disclosed his identity to the first appellant and asked the first appellant to dip his hands in the solution to find out the presence of phenolphthalein. His right hand finger in wash turned into pink colour indicating the presence of phenolphthalein. Hence, the hand solution was collected and seized and examined by the chemical laboratory. The

tainted money was seized from the 2nd appellant and his hand wash also turned pink colour indicating the presence of phenolphthalein and the tainted money was recovered from the 2nd appellant. After preparing the seizure mahazar on the spot, the trap laying officer left the scene of occurrence. Since the demand and acceptance are spoken by PW2, PW3 and the trap laying officer Mr.R.Ravi [PW6], the trial Court has held that the demand and acceptance of illegal gratification are proved, the presumption against the accused persons were not rebutted. Hence, both of them are guilt of the offences as stated above.

5. Aggrieved by the judgment of conviction and sentence against the accused persons, the present appeal has been preferred alleging that the trial Court has failed to consider the omission, errors and irregularities found in the Sanction Order marked as Ex.P1 and the same being spoken by PW1. The said Sanction Order does not indicate application of mind and also competency of the sanctioning authority. It was contended by the learned counsel appearing for the appellants that the appointing authority of Chief Commercial Clerk is the Divisional Railway Manager, whereas the sanction to prosecute has been given by the Senior Divisional Commercial Manager. The cover with tainted money recovered from the 2nd appellant was received from the defacto

complainant to disburse wages to the persons, who have transported 35 bundles of leather goods from the booking office to platform No.11, where the Tamil Nadu Express Train and Grand Trunk Express Train used to leave to Delhi. The said explanation spoken by DW1 was not considered by the trial Court, which has led to perverse finding of guilty.

6. The conviction of the appellants for two offences of criminal conspiracy is illegal, since there can be only one criminal conspiracy and in furtherance of the said conspiracy, there may be several other crime, whereas the trial Court has convicted the appellants for conspiracy to commit the offence under Section 7 of the Prevention of Corruption Act, 1988 and for conspiring to commit the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, which has caused grave prejudice to the appellants. The first Information Report itself is a defective document, since the signature of the complainant is not found in the First Information Report Ex.P9. The defacto complainant and his employer had a grouse over the first appellant, since he has scolded for bringing parcels at the 11th hour and pressurized him to load it on the same day.

7. The learned counsel appearing for the appellants submitted that the complaint against the first appellant is that he has demanded bribe of Rs.2,000/- to send the parcels and if the money is not paid, he will not load the parcels. However, through the prosecution witness itself, it has been elucidated that the parcels booked by the defacto complainant [Mr.Naveen Kumar] were loaded in the Grand Trunk Express, which left from Chennai Central at 04.30p.m., whereas the money was paid and the same was recovered at 20.50 hours much after the goods were loaded and left the train from Chennai Central Railway Station. If demand of bribe money was pre-condition or motive to load the parcels, the parcels ought not to have been loaded before receipt of bribe money. The very fact that the parcels were already loaded in the Grand Trunk Express and left the Central Station, clinchingly proves the fact that the money, which was recovered from the 2nd appellant, was not an illegal gratification as a motive to load the parcels in the train leaving to New Delhi. Further, it is contended by the learned counsel appearing for the appellants that the First Information Report is only against the first appellant, whereas the final report was filed including the 2nd appellant and the charges for conspiracy to do the alleged crime. However, the investigation agency has not intimated the alteration of the First Information Report with inclusion of the additional accused and inclusion

of conspiracy charge against the appellants. In the light of the sequence of events, the trial Court ought to have held that the appellants are innocent, since it is admitted by the defacto complainant[PW5] and his employer Mr.Syed Ahmed Masood [PW4] that they had a grudge over the first appellant for using abusive language against them, while requesting him to load the parcels. When the complaint is the outcome of grudge and motive, the evidences of these witnesses ought to be viewed in suspicion. Therefore, in the absence of proof of demand of bribe and in the light of the positive evidence let in by the defence for the entrustment of cover containing Rs.2000/- to the second appellant, the plausible explanation given by the accused should have been considered by the trial Court.

8. In support of his submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in ***Mukhtiar Singh (since deceased) through his L.R. v. State of Punjab reported in [AIR 2017 Supreme Court 3382]*** wherein, it is held in para 25, which reads as under:

> "25. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to

> constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the preson in whose presence Rs.3000/- at the first instance is alleged to have been paid i.e Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3000/- as well as the demand of Rs.2000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statment of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

Since the ingredients of Section 7 and 13 of Prevention of Corruption Act, 1988 as well as the conspiracy have not been proved by the prosecution, he prayed the appeal has to be allowed.

9. Per contra, the learned Special Public Prosecutor (CBI Cases) appearing for the respondent submitted that PW5 [Mr.M.Naveen Kumar], who is working as staff under PW4 [Mr.Syed Ahmed Masood] came with 35 bundles to the booking office on 10.06.2004 weighed the parcels and paid the requisite charge on 10.06.2004 itself and the same is proved through Ex.P6. The parcels were not loaded in the train leaving to Delhi on that day. The first appellant has demanded Rs.2000/- to load the parcels, which was informed to PW4 [Mr.Syed Ahmed Masood] the employer of the defacto complainant PW5[Mr.M.Navin Kumar]. Thereafter, they have decided to lodge the complaint with CBI. Thus, the First Information Report dated 11.06.2004 was registered at 16.00 hours. The investigating agency has conducted the pre trap proceedings and recorded the events in the entrustment mahazar marked as Ex.P2. The bribe money smeared with phenolphthalein was kept in the cover and handed over to the defacto complainant [Mr.M.Naveen Kumar] with instruction, he should handover the cover only after the first appellant demands it. PW5[Mr.M.Naveen Kumar] and PW2-accompanying witness [Mr.T.Manokaran] had deposed in unequivocal term that when he went to platform No.11, the first appellant was writing in the register and enquired PW5[Mr.Naveen Kuamr] whether he has brought money. Thereafter, PW5 has handed over the cover to the first appellant and the

first appellant has received the cover first in his left hand and shift the same in his right hand, then giving the cover to the second appellant. Though the hand wash of the first appellant's (A1) both hands have turned pink in colour, on the naked eyes the colour change was not so visible. The chemical analysis report[Ex.P13] proves positive for the presence of phenolphthalein.

10. Further, the learned Special Public Prosecutor mainly contended that while the receipt of money was not disputed, the explanation given by the appellants that it was received towards wages for the parcels sent by PW4[Mr.Syed Ahmed Masood] through PW5 [Mr.M.Naveen Kumar] is to be tested, whether it is plausible explanation. First of all, the 2nd appellant/A2 is not an agent or representative of the coolie at Central Railway Station. He was the employee under PW9 [Mr.G.Srinivasa Rao] who was agent for Hindu Newspaper.

11. Apparently, there is no privity between the defacto complainant and the second appellant in the matter of loading parcels at Railway Station. While so, the necessity to give money to the second appellant/A2 that too after the parcels have been loaded and left the railway station is unbelievable. The trial Court, on a proper appreciation of evidence before

it, has rightly held the appellants guilty of the charges. The irregularities in framing of charges will not enure any benefit to the appellants and in so far as the attack made against the sanction order, the learned Special Public Prosecutor (CBI Cases) submitted that both the sanction order as well as the officer who has issued the sanction order, have categorically stated that the Senior Commercial Manager is the appointing authority as well as the disciplinary authority including removal from service in respect of Chief Commercial Clerk working in the Commercial Department and PW1[Mr.Senthil Kumar] being the Senior Divisional Commercial Manager is fully competent to grant sanction for prosecution.

12. Heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor(CBI Cases) appearing for the respondent and perused the documents relied on by the prosecution as well as the defence along with the deposition.

13. In sofar as the attack on sanction order, this Court finds that Mr.Senthil Kumar, who has been examined as PW1 has categorically deposed about his official status as the Senior Divisional Commercial Manager, Southern Railway he is the competent authority to grant sanction. The learned counsel appearing for the appellants relied upon

Ex.D2, which is the communication to the Senior Divisional Railway Manager, Chennai Division intimating the provisional selection of the first appellant as Chief Commercial Clerk and said this letter is dated 13.09.1994 signed by the Senior Divisional Personal Officer/Madras. It is contended by the learned counsel appearing for the appellants that the appointment proceeding has been approved by the Divisional General Manager. So, he alone is the appointing authority.

14. Ex.D2 is not the appointing order and it is only a communication regarding selection of candidates. It is signed by Senior Divisional Personal Officer. In Ex.D2, it is nowhere indicated that the appointment was made by any officer over and above the rank of the Senior Divisional Manager. Therefore, the attack on the sanction order Ex.P1 fails and this Court holds that PW1[Mr.Senthilkumar] is the competent authority for appointment and removal of the officers of the rank of Chief Commercial Clerk and therefore, he is the competent person to accord sanction for prosecution.

15. The next point of attack is that there was animosity between the PW4[Mr.Syed Ahmed Masood] and the first appellant, which has led to foisting the case against him. Animosity may be true, but, the

acceptance of cover containing tainted money by the first appellant is spoken by PW2[Mr.T.Manokaran] and PW5[Mr.M.Naveen Kumar]. The hand wash of both the accused contains phenolphthalein indicates that both of them have handled the tainted cover. The explanation and retraction of the first appellant, which is marked as Ex.D1 indicates that the cover containing tainted money was received by the 2nd appellant to disburse wages for the parcels loaded by the defacto complainant.

16. Further, he claims that the presence of phenolphthalein in his hand wash was alleged to be the result of the manipulation by the CBI Officer, who put his hand along with the first appellant hand in the water and brush their hands till the colour of the water turned into pink. If the explanation given by the first appellant that for loading 35 parcels wage of Rs.2000/- was given to A2, then, there must be some evidence to prove wages for loaders used to be disbursed through the 2nd appellant[A2] or it will be disbursed much after loading and not before or immediately after loading and there should also be some evidence to show for loading 35 parcels, the normal wage will be around of Rs.2000/-. If one looks at the cross examination of PW4[Mr.Syed Ahmed Masood], when suggestion was put to him that to transport 35 parcels from parcel office to Walltax Road, it will cost of Rs.2000/-, he has denied

the suggestion. He has categorically stated that to load a parcel weighing between 30 kg to 60 kg, the coolie is only Rs.5/- per parcel. To the suggestion put to him that the gross weight of 35 parcels could be around 4000 kg, the witness has replied that he is not aware of the weight. However, the railway receipts issued by the Railway Department for the said 35 parcels are marked as Ex.P6. PW5[Mr.M.Naveen Kumar] in his cross examination has referred the weight of 35 bundles sent under 3 loads. According to his evidence, he booked 35 bundles to three different customers at New Delhi on 10.06.2004. The first consignment (18 bundles) weigh 10.65 quintals, the second consignments weigh 1.20 quintals, the third consignment weighing 10.33 quintals. The railway receipts are marked as Exs.P6, P7 and P8. The total weight of 35 parcels as per PW5 evidence and Exs.P6 to 8 receipts is only 22 quintals ie. about 2200 kg. Therefore, going by PW4 and PW5 evidence by no stretch of imagination, the loading wage for 35 parcels weighting about 22 quintals will be Rs.2000/-.

17. The recovery of tainted money from the possession of A2/2nd appellant and presence of phenolphthalein in the hands of both accused 1 and 2, coupled with the evidence of PW5/defacto complainant and the evidence of PW2[Mr.T.Manokaran] the accompanying witness indicate the

guilty of A1 and A2 without any doubt. The appellants to prove their innocence have examined one witness. According to DW1[Mr.M.Sekar], he was clerk in Madras Super Fast Service during the relevant point of time and he was present at platform No.11 on 11.06.2004 along with the first appellant for loading 17 parcels booked by him in Tamil Nadu Express and he saw PW5[Mr.M.Naveen Kumar] handing over a cover to the 2nd appellant/accused and instructing him to disburse the coolie. The 2nd appellant received the cover and kept in his pant pocket.

18. DW1[Mr.M.Sekar] has not produced any document to show that he was employee of Madras Super Fast Service during the relevant point of time and he has not produced any document to show that on that particular date he booked 17 parcels to be loaded in Tamil Nadu Express to infer his presence at the relevant point of time. Therefore, when his very presence at platform No.11 at the relevant point of time itself is doubtful and not proved, his evidence in support of the appellants cannot be considered. Therefore, the explanation for receiving Rs.2000/- coolie fails. The evidence of DW1 is totally unbelievable for want of supporting document.

19. In such circumstances, since the prosecution has proved the

demand and acceptance of tainted money through PW2[Mr.T.Manokaran] and PW5[Mr.M.Navin Kumar], the presumption of rebuttal under Section 20 of Prevention of Corruption Act, 1988 is heavily against the appellants. The said presumption has not been adequately rebutted, so this Court confirms the judgement of the trial Court.

20. In the result, ***the Criminal Appeal is dismissed.*** Conviction and sentence imposed on the appellants by the trial Court viz., Principal Special Court for CBI Cases, Chennai is confirmed. Consequently, connected Miscellaneous Petitions are closed, if any.

22.09.2017

Index:Yes
Internet:Yes/No
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Speaking order/non speaking order
To
1.The Principal Special Judge for CBI Cases, Chennai 104.
2.The Special Public Prosecutor (CBI cases), Chennai 104.

Dr.G.Jayachandran, J.

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Pre-delivery judgment made in
Crl.A.No.10 of 2009

22.09.2017