IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03.10.2017

Pronounced on :24.10.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal No.780 of 2015

T.Ramachandran .. Appellant/Accused

/versus/

State represented by
The Deputy Superintendent of Police,
V & A C Villupuram,
Crime No.1 of 2007. .. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the judgment of conviction and sentence passed in Special Case No.7 of 2014 dated 30.11.2014 for offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 on the file of the Special Judge, Special Court for Prevention of Corruption Act cases, Villupuram and pays for setting side the same and acquit him.

For Appellant :Mr.S.Ashokkumar,
Sr.Counsel for
Mr.Sasidharan

For Respondent :Mr.C.Iyyaparaj,
Addl.Public Prosecutor

J U D G M E N T

The appellant in this criminal appeal has aggrieved by the judgment of conviction passed by the trial Court in Special C.C.No.7 of 2014 on the file of Special Judge for Prevention of Corruption cases, Villupuram.

2. The case against the appellant as alleged by the prosecution is that while the appellant T.Ramachandran was working as Junior Engineer at Tamil Nadu Electricity Board, Rishivanthiyam, he demanded a sum of Rs.1000/- as bribe on 14.05.2007 from one Elumalai, S/o Kadirvelu for shifting agriculture service connection bearing S.No.182/6 at Rishivanthiyam to S.No.76/B at Vengalam Village. Since

Elumalai/defacto complainant was not inclined to give the bribe money to the appellant/accused, he went to the office of Vigilance and Anti-Corruption at Villupuram on 14.05.2007 and he gave an oral complaint to the Inspector of Police[Kuppusamy], Vigilance and Anti Corruption, Villupuram and he in turn recorded the oral complaint in computer and registered a case in Crime No.1 of 2007 at Villupuram Vigilance and Anti Corruption under Section 7 of Prevention of Corruption Act, 1988 at 17.00 hours on 14.05.2007.

3. Pursuant to this complaint, on the next day i.e on 15.05.2007, after conducting pre-trap proceedings and recording the same by way of entrustment mahazar, the Inspector of Police has sent the defacto complainant[Elumalai] accompanied by Sarangarajan[P.W.3] to witness the transaction. As per the instruction, the defacto complainant and the accompanying witness [PW-3] went to the house of the appellant/accused at Thriukovilur at about 7.45 a.m. and met the appellant/accused. The appellant/accused, the defacto complainant[Elumalai] has handed over the file to him , which was collected from one Karthick as told by the appellant on the previous day. On demand of the appellant, the defacto complainant[Elumalai] has handed over bribe money of Rs.1000/- along with the file. This was witnessed by the accompanying witness [P.W.3]. Immediately, after getting pre-arranged signal, the trap laying team has entered into the house of the appellant/accused and enquired him about the bribe money. The defacto complainant[Elumalai] has told the trap laying team that the money was kept in the almirah and thereafter, it was recovered by them. The hand wash of the accused/appellant tested in sodium carbonate solution turned pink indicating the presence of phenolphthalein. After recording the statement of the witnesses, the appellant/accused had obtained sanction to prosecute from the competent authority Mr.Sivakumaran, Executive Engineer, TNEB. Final Report was laid. Based on the final report, charges under Section 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 were framed against the appellant/accused.

4. Before the trial Court, prosecution has examined 11 witnesses, marked 18 documents and 2 material objects. On the side of defence, 2 documents were marked. The trial Court accepting the prosecution evidence has held the accused guilty of both charges and had sentenced him to undergo 1 year RI and imposed a fine of Rs.2000/- in default, to undergo 3 months SI for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo 1 year RI and pay a fine of Rs.1000/- in default, 3 months SI for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5. The conviction judgment of the trial Court is questioned by the appellant on the following grounds:-

The appellant had never demanded bribe of Rs.1,000/- from the defacto complainant either on 14.05.2007 or on 15.05.2007 as alleged by the prosecution. The trial Court has failed to appreciate Exs.D1 and D2, which clearly show that on 14.05.2007 at 08.00 a.m., the accused/appellant was at the office and not at his residence, as contended by the prosecution. The application for transfer of service connection submitted by Kadirvelu on 26.12.2006, was processed and forwarded to the Assistant Executive Engineer by the appellant on 12.03.2007 itself. Though this fact has been proved and established from the defence's documents, the trial Court has failed to appreciate the evidence. Immediately after the trap, the explanation given by the accused/appellant was not recorded by the trap laying officer. Similarly, the response to incriminating evidence by way of written reply under Section 314 of Cr.P.C., has not been considered by the trial Court. The sanctioning authority has miserably failed to apply his mind and has accorded sanction without applying his mind and this fact has not been properly considered by the trial Court. For the aforesaid reasons, the judgment of the trial Court is erroneous and unjust, which requires re-consideration by the appellate Court.

6. The learned Additional Public Prosecutor appearing for the prosecution/respondent submitted that the demand and acceptance has been well proved through PW-2[Elumalai] and PW-3 [Sarangarajan] coupled with the fact that the recovery of tainted money from the house of the appellant and presence of phenolphthalein indicating the receipt of money clearly proved the factum of demand and acceptance of illegal gratification by the accused/appellant. The presumption under Section 20 of the Prevention of Corruption Act, 1988 has not been rebutted by the accused/appellant with any plausible explanation Exs.D1 and D2 are of no assistance to the appellant, since the seizure mahazar clearly indicates the file relating to the application given by Kadirvelu was in possession of the accused and the same was recovered from the appellant/accused, immediately after the trap, which fact is admited by the appellant/accused by affixing his signature in the seizure mahazar as Ex.P6. Therefore, there is no error in the conviction judgment of the trial Court.

7. Point for determination:-

Whether the impugned judgment, in this appeal is contrary to the probability of the case, evidence and contrary to the principles of law adumbrated in the Code of Criminal Procedure, Prevention of Corruption Act, 1988 and the manual of CBI.

8. Ex.P3 is the complaint of the defacto complainant, Elumalai. According to this complaint, Kadirvelu had ancestral property at Vengalam village. Two years prior to the complaint,

his father has purchased land at Rishivanthiyam. In order to transfer the electrical service in the Rishivanthiyam land to the land at Vengalam, his father has given an application on 26.12.2006. When he has gone to Electricity Board at Rishivanthiyam to enquire about the application given in the name of his father, he could not meet the accused, who was serving as Junior Engineer. At last on 14.05.2007 at about 8.00 a.m., he met the appellant/accused at Thirukovilur in his house and enquired about the application. The appellant has informed him that the file regarding his application is with Karthick of Thirupalapanthal and told him to collect it from Karthick and come on the next day, some time with Rs.1000/-. When the defacto complainant [Elumalai] enquired the appellant/ accused whether the money is for shifting charge payable to the Government, the appellant/accused has told him that it is the bribe money to be paid for him and only if he sign the paper and forward it to Additional Divisional Office at Thriukovilur he will know how much charge he has to pay for shifting. The endorsement on Ex.P3 indicates that the oral complaint given by Elumalai has been recorded in the computer. Opening paragraph in the complaint indicates that Elumalai is an unlettered person, who cannot read and write except put his signature. Now, if he read the orders according sanction to prosecute issued by PW1[Sivakumaran], Superintending Engineer, TNEB, Villupuram District, the sanction order starts with the following lines:-

> "Whereas Thiru.T.Ramachandran, was working as Junior Engineer TNEB, Rishivanthiyam from 13.04.2005 to 15.05.2007 is a public servant, now under suspension.
>
> Whereas, it is alleged that Tr.K.Elumalai, S/o Kathirvel, Rishivanthiyam, Thriukoilur Taluk, Villupuram District, is a graduate and agriculturist having three acres of lands at Rishivanthiyam and Vengalam villages Tirukoilur Taluk, Villupuram Distirct for shifting of pump set of agricutural service S.F.No.132/6 Rishivanthiyam to S.F.No.76/6B of Vengakalam Village."

This clearly shows that PW1[Sivakumaran] has not gone through the file properly. His non-application of mind is clearly exposed in the very first two paragraphs of his order marked as Ex.P1. As per the deposition of PW-2[Elumalai], he met the accused/appellant on 14.05.2007 at 8.00 a.m., at his residence in Thriukovilur. He got the address of the accused/appellant from one R.S.R. The prosecution has not placed before this Court who is this R.S.R and why he gave the residence address of the accused/appellant to the defacto complainant[PW-2] and why he asked PW-2 to meet the accused/appellant at his residence.

8. A perusal of Ex.D2, the attendance register maintained in the office of the accused and the evidence of PW-7 [Ramachandran], Assistant Executive Engineer(in-charge) of Thirukovilur west indicate that on 14.05.2007, the accused/appellant has reported duty at Rishivanthiyam and reporting time starts from 08.00 to 08.30 a.m.. The distance between the residence of the appellant/accused at Thirukovilur and the Rishivanthiyam office of the appellant is about 17 to 18 km. So, from the fact elucidated and established through Ex.D2 and PW-7[Ramachandran]. The probability of the complainant meeting the accused/appellant at his residence on 14.05.2007 at 08.00 a.m, is remote and also the allegation of the defacto complainant that he tried to meet the appellant/accused on several occasion but, he was not in his office and hence he got the address of the appellant from one R.S.R. gets falsifies. From the entries made in the attendance register, it indicates that the accused/appellant has attended all the working days in the month of May 2007.

9. The further case of the prosecution as spoken by PW-2 [Elumalai], PW-3[Sarangarajan] and PW-10[Kuppusamy, the Trap Laying Officer] is that on 14.05.2007 PW-2[Elumalai] went to the residence of Karthikeyan[PW.8] for collecting the file pertaining to the application regarding shifting the electricity service connection given by Kadirvelu and when the defacto complainant met the accused/appellant on 15.05.2007 at about 07.45 a.m., he handed over the file collected from Karthikeyan to the appellant/accused along with the bribe money of Rs.1000/-. The evidence of Karthikeyan who was examined as PW-8, is that the file was handed over to him by the Commercial Inspector, Tamilarasan and as per the Inspection of Tamilarasan, he has handed over the file to Durairaj and Shanmugam during the first week of May, 2007. He has categorically deposed that he has never seen Elumali/Defacto complainant[PW-2] and this witness has been treated as hostile, since he has not supported the case of the prosecution.

10. As per the evidence of PW-10 [Kuppusamy] the trap laying officer, after receiving the pre-arranged signal from PW-2 [Elumalai], he went inside the house of the accused/appellant. PW-2 and PW3 have identified the accused/appellant and thereafter after introducing himself to the accused, he asked the appellant/accused to dip his right hand in the colourless solution which turned into pink in colour. Thereafter, he enquired about the bribe money. The accused/appellant went inside the room on the southern side and took out the money from the centre shelf. PW-10[Kuppusamy] recovered the same along with the file which was kept on the teapoy. The seizure mahazar is marked as Ex.P6. The observation mahazar is marked as Ex.P8. The

rough sketch is marked as Ex.P7. PW-3[Sarangarajan] the accompanying witness, has deposed that on entering into the house, the trap laying officer introduced himself to the accused/appellant and enquired about two five hundred currencies, which was received from the defacto complainant. When the Inspector asked about where the accused has kept the money, the accused took out two five hundred rupees notes from the shelf and produced to the Inspector. Thereafter, the Inspector has directed the constable to prepare Sodium Carbonate Solution and asked the appellant/accused to dip his right hand into the colourless solution, which turned into pink in colour. If the version of PW-3[Sarangarajan] is correct, then there is no wonder in the presence of phenolphthalein in the hands of the accused. Since he has been asked by PW-10 [Inspector] to take the money from the shelf and thereafter, PW-10 has conducted phenolphthalein test.

11. The defence of the appellant found in his explanation given under Section 313 of Cr.P.C., is that on 15.05.2007 the defacto complainant/Elumalai[PW-2] and the shadow witness/ Sarangarajan [PW-3] came to his house, enquired about the application and he has informed that he has already recommended for shifting the electricity service connection, as soon as he get the orders from the Assistant Executive Engineer, he will intimate the same. Thereafter, both of them went out and came again asking for some water. The appellant/accused went inside to bring some water and gave to them, they left the house and came back along with Kuppusamy Inspector. When Kuppusamy enquired the appellant/accused as to whether he has received the money from PW-2, he answered in negative then, the PW-2 [Elumalai] showed the shelf and informed the police that, the money was kept in the shelf, thereafter, the Inspector[PW-10] asked him to take the money. This explanations of the accused appears to be probable., because Ex.D1, dated 12.03.2007 the communication of the appellant to the Assistant Executive Engineer[West], Thriukovilur discloses the fact that he has recommended for shifting electricity service connection and sought for approval of the Assistant Executive Engineer as early as 12.03.2007. If the allegation of prosecution is true, the accused ought not to have recommended the application of Kadirvelu, till the receipt of illegal gratification.

12. On a cumulative reading of the evidence of PW-2 [Elumalai], PW-3 [Sarangarajan], PW-8 [Karthikeyan] and PW-10 [Kuppusamy] and in the light of Exs.D1 and D2, the prosecution has not proved the fact that on 14.05.2007, the defacto complainant met the accused at his residence and when he met the accused, he demanded bribe of Rs.1000/- and asked him to collect the file from Karthikeyan and meet him on the next day. The prosecution has also failed to prove that the accused has obtained the illegal gratification from the defacto complainant.

The manner in which the tainted money has been recovered from the shelf of the appellant's house, is very suspicious and doubtful. More so, when PW-3[Sarangarajan] has deposed that the accused was asked to handle the money smeared with the phenolphthalein and thereafter, asked to dip his right hand in the sodium carbonate solution. When the prosecution has failed to prove both the demand as well as the acceptance with cogent and convincing evidence, the presumption under Section 20 of the Prevention of Corruption Act, 1988 will not apply. The demand and acceptance is a sine qua non for presumption under Section 20 of the Prevention of Corruption Act, 1988.

13. Having failed to establish beyond doubt the alleged demand either on 14.05.2007 or on 15.05.2007, the benefit of doubt ought to have been given to the appellant/accused. The trial Court has miserably failed to look into the grave discrepancies between the evidence of PW-3[Sarangarajan] and PW-1[Sivakumaran] in respect of recovery of tainted money, coupled with the fact that PW-8[Karthikeyan] has not supported the case of the prosecution regarding the file pertaining to the application of Kardirvelu, which is alleged to have been recovered from the house of appellant, since, the trial Court has failed to appreciate the evidence properly, which is led to mis-carriage of justice, it is appropriate to set aside the judgment and the appeal is liable to be allowed.

14. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused by the trial Court viz., Special Judge, Special Court for Prevention of Corruption Act cases, Villupuram in S.C.No.7 of 2014 , dated 30.11.2015 are hereby set aside. Bail bond, if any, shall be refunded to the appellant/accused. Fine amount paid by the appellant/accused, if any, shall be refunded to the appellant/accused. The appellant/accused is acquitted of the charges levelled against him and he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

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To

1 THE SPECIAL JUDGE,
SPECIAL COURT FOR PREVENTION
OF CORRAPTION ACT CASES,
VILLUPURAM.

2.THE DEPUTY SUPERINTENDENT OF POLICE, V & A C VILLUPURAM.

3.THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

+1 C.C. To Mr.Sasidharan Advocate SR.No. 75191/17

Judgment made in
Crl.A.No.780 of 2015

SR.NO.(CO)
T.R (15/11/2017)