

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2017

Coram:

The Hon'ble Dr. Justice G.Jayachandran

Criminal Appeal No.251 of 2009

Simpson

.. Appellant

/versus/

State: Rep.by
Inspector of Police,
Vigilance & Anti-Corruption,
Kancheepuram, Kancheepuram District.
(Cr. No.4/AC/2001/KM)

.. Respondent

Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to set aside the conviction and sentence passed by the learned Special Judge and Chief Judicial Magistrate, Chengalpattu, Kancheepuram, Kancheepuram District in Spl.C.No.2 of 2003, dated 29.04.2009 and acquit the appellant.

For Appellant :Mr.V.Gopinath, Sr.C for
Mr.S.Manimaran

For Respondent :Mr.P.Govindarajan, APP(crl.side)

JUDGMENT

This appeal is preferred by the accused challenging the judgment of conviction under Section 7 and 13 (2) r/w 13(1)(d) of P.C., Act, 1988.

2. The defacto complainant one Shanmugavel[PW2], who hails from Adi-Dravidar community, married one Dhanalakshmi [PW10] who belongs to Sengunthar community. Since he wanted to get intercaste marriage certificate, he approached the Tahsildar Office, Kancheepuram. At the Thasildar office the defacto complainant[PW2] was referred to the Revenue Inspector, Tmt.Baby Indira[PW7], who in turn directed the defacto complainant[PW2] to produce marriage registration certificate. Thereafter, the defacto complainant [PW2] got his marriage register certificate vide Ex.P7 and submitted his marriage certificate issued by PW5[Mr.Jayakumar, Sub Registrar] to PW7[Tmt.Baby Indira]. Thereafter, he met one Nirajan, B2 Clerk at Kancheepuram Taluk Office and enquired about his intercaste marriage certificate.

3. It appears that the said Nirajan has demanded Rs.1,000/- as illegal gratification to issue intercaste marriage certificate. After 10 days, again, PW2[Mr.Shanmugavel] had gone to Tahsildar Office. This time, he met the accused. The accused, after knowing that the defacto complainant[PW2] belongs to his community, asked him to come on 10.12.2010. Since the defacto complainant[PW2] was not inclined to

give any bribe to get his certificate, he had given a complaint to the Deputy Superintendent of Police, Vigilance and Anti-Corruption Office, Kancheepuram, reporting that a person at Tahsildar Office is demanding bribe of Rs.500/- for issuing intercaste marriage certificate. Based on the said complaint dated 10.12.2001 marked as Ex.P8, a trap has been laid. After procuring two official witnesses, the trap laying team led by PW12 [Mr.Theertharappan, Deputy Superintendent of Police] had gone to the Tahsildar Office. PW2 [Mr.Shanmugavel] and PW3 [Mr.Vannamathivanan] met the accused and the accused received Rs.500/- from PW-2[Mr.Shanmugavel], which was smeared with phenolphthalein. However, returned back three hundred rupees note plus one fifty rupee note to the defacto complainant [PW2] saying since he belongs to his community Rs.150/- is enough. On receiving the pre-arranged signal, the trap team went to the accused seat and recovered two numbers of hundred rupees note from the table drawer of the accused. Before recovering the money, they have conducted phenolphthalein test on the hands fingers of the accused which turned pink in colour. The samples were drawn from the solution and labelled. After completion of investigation, the prosecution has laid final report.

Based on the final report, the trial Court has framed two charges. 1. under Section 7 of the Prevention of Corruption Act, 1988 for demand and acceptance of Rs.150/- from the defacto complainant on 10.12.2001 to issue intercaste marriage certificate and for obtaining pecuniary advantage by abusing his official position under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. To prove the case, the prosecution has examined 13 witnesses and marked 19 Exhibits and 5 Material Objects. On the side of the accused, one Sundar was examined as DW1.

5. The trial Court, on considering the prosecution witnesses has held that the prosecution has proved the guilt of the accused for the charges framed against him and has imposed one year RI and to pay a fine of Rs.5,000/- for the offence under Section 7 of the Prevention of Corruption Act, 1988 and one year RI and to pay a fine of Rs.5,000/- for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The trial Court ordered the sentences to run concurrently.

6. The short point canvassed before this Court by the appellant through the learned Senior Counsel appearing for the appellant is that PW2[Mr.Shanmugavel] has turned hostile and he did not support the theory of the prosecution. PW3[Mr.Vannamathivannan], who was alleged to have accompanied, PW-2 when he gave the tainted money to the accused person, had not spoken about the demand. PW3[Mr.Vannamathivannan]'s evidence shakes the very basis of the prosecution case by admitting that he signed both the complaint as well as First Information Report and the First Information Report was written in his presence.

7. While the trap laying officer[PW12] has deposed that after receiving the complaint from PW2[Mr.Shanmugavel], he registered the First Information Report and thereafter, he made arrangement for procuring the official witnesses. The evidence of PW3 [Mr.Vannamathivannan] is totally contradictory to the PW12, trap laying officer. The signature of PW3[Mr.Vannamathivannan] in the First Information Report as well as in the complaint is more probablise. The defence theory that actual complaint given by PW-2[Mr.Shanmugavel] is burged and substituted with Ex.P2.

8. Furthermore, the learned Senior Counsel appearing for the appellant pointed that PW2 [Mr.Shanmugavel], while deposing before the Court, turned hostile and the contradictions found in his previous statement recorded under 161 Cr.P.C., were put to PW2 [Mr.Shanmugavel] in the cross examination. Whereas, the said statement was not confronted and elucidated the contradiction with the investigating officer [PW13]. Hence, the entire evidence of PW2[Mr.Shanmugavel] has to be eschewed.

9. In support of his submission, the learned counsel cited the judgment of the Hon'ble Supreme Court in **Krishna Chander v. State of Delhi** reported in **(2016) 1 Supreme Court Cases(Cri) 725**, wherein paras 30 and 31 reads as under:-

"30. The investigating officer (PW10) in his evidence, has not at all spoken of the contents of the statement of the complainant Jai Bhagwan (PW2), recorded by him under Section 161 Cr.P.C. Further, PW2 in the light of the answers elicited from him in the cross-examination by the Public Prosecutor, with regard to the contents of Section 161 Cr.P.C statement which relevant portions are marked in his cross-examination and the said statements were denied by him, the prosecution

was required to prove the said statements of PW2 through the investigating officer to show the fact that PW2 Jai Bhagwan in his evidence has given contrary statements to the investigating officer at the time of investigation and, therefore, his evidence in examination in chief has no evidentiary value. The same could have been used by the prosecution after it had strictly complied with Section 145 of the Evidence Act, 1872. Therefore, the IO should have spoken to the above statements of PW2 in his evidence to prove that he has contradicted in his earlier Section 161 CrPC statements in his evidence and, therefore, his evidence cannot be discarded to prove the prosecution case.

31. It becomes amply clear from the perusal of the evidence of PW-10, I.O. in the case that the same has not been done by the prosecution. Thus, the statements of PW-2 marked from [Section 161](#) of Cr.P.C. in his cross- examination cannot be said to be proved in the case to place reliance upon his evidence to record the findings on the charge. The position of law in this regard is well settled by this Court in the case of [V.K. Mishra v. State of Uttarakhand](#)[(2015) 9 SCC 588]. The relevant paras are extracted hereinbelow:

"16. [Section 162](#) CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under [Section 161\(1\)](#) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to [Section 162\(1\)](#) CrPC. The statements under [Section](#)

161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

17. The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

10. Heard the learned Senior counsel appearing for the appellant and the learned Additional Public Prosecutor(crl.side) appearing for the respondent and perused the materials available on record.

11. Point for determination:

Whether the judgment of the trial Court
needs any interference?

12. A perusal of PW2[Mr.Shanmugavel] deposition indicates that initially, he went to Tahsildar Office at Kancheepuram and he met one Niranjan, who in fact has demanded bribe. But, subsequently, it was the accused, who was present on the day of the trap. Contradicting his previous statement, the investigating officer, on oath before the Court PW2[Mr.Shanmugavel] has not supported the case of the prosecution, so, he has been declared hostile. While so, 161 Cr.P.C., statement of the hostile witness ought to have been put to the investigating officer[PW13], by elucidating the contradiction, so as to weigh the previous statement of the witness. As pointed out by the Hon'ble Supreme Court, if such an exercise is not done by the prosecution during the trial, the evidential value of the hostile witness loses in toto and no part of his statement can be taken for appreciation.

13. In this case, the prosecution not only failed to elucidate the contradiction of the hostile witness with the investigating officer[PW13], but also the investigating officer in his deposition has stated that PW2[Mr.Shanmugavel] has deposed before the Court as he has stated to him during investigation. If that is so, then the Court has to assess PW2[Mr.Shanmugavel] and PW3[Mr.Vannamathivannan] deposition to find whether there was any demand of illegal gratification by the accused person and the money received by him is towards for the said illegal gratification. For that purpose, on seeing the evidence of PW3[Mr.Vannamathivannan] who is supposed to have accompanied PW2[Mr.Shanmugavel], the relevant portion of his deposition runs as follows:

"I and Shanmugavel went to the Taluk Office and saw one Simpson. At that time, Simpson asked Shanmugavel[PW2], whether he has brought Rs.500/-. In response to that Shanmugavel answered in affirmative. Immediately, the accused told that we both belong to same caste so it is enough to give Rs.150/-".

14. PW2[Mr.Shanmugavel] the defacto complainant has deposed before this Court that on 10.12.2001 at about 1.30 p.m., when he went to Taluk Office, he saw the accused and voluntarily told him that he has brought Rs.500/-. When the accused asked him about his community, the witness answered that he belongs to Adi-Dravidar community and then, the accused demanded only Rs.150/-. Since the witness had no Rs.50/- currency with him, he gave two Rs.100/- notes, which were smeared with phenolphthalein and the accused returned Rs.50/- back to him. Whereas PW3[Mr.Vannamathivanan] has deposed before the Court that on that day, when he went along with PW2[Mr.Shanmugavel] and met the accused, the accused asked whether PW2[Mr.Shanmugavel] brought Rs.500/-, which he demanded earlier, for which PW2[Mr.Shanmugavel] answered in affirmative. Thereafter, the accused told PW2 [Mr.Shamugavel] that both of them belonged to same community so it is enough to give Rs.150/-. Therefore, PW2[Mr.Shanmugavel] gave two number of hundred rupee currency. The accused received it and kept in his drawer and returned Rs.50/- back to PW2[Mr.Shanmugavel]

15. This version which is spoken by PW3 [Mr.Vannamathivanan] does not sound logic, because his evidence gives an impression, as if, the accused came to know about the community of the defacto complainant only at the time of receiving the bribe money, so he reduced the bribe amount. Whereas the demand of bribe itself arises from issuance of intercaste marriage certificate, which is issued to the person, who belongs to schedule caste, married to a person other than the schedule caste and if one go by the complaint, which is marked as Ex.P8, even before the date of complaint, the accused was aware of the community of the defacto complainant and Ex.P8 complaint indicates that on 06.12.2007 itself, the accused has reduced the demand from Rs.1000/- to Rs.500/- showing concession on caste affinity and asked the defacto complainant to come on 10.12.2001 with Rs.500/-, since both of them belong to the same community.

16. Therefore, on facts, the prosecution is unable to prove that the money alleged to have been received by the accused person is illegal gratification and there was a demand made by him for the same and accepted on 10.12.2001. The key witness PW2[Mr.Shanmugavel]

having turned hostile to the prosecution, a minimum care should have been taken to put forth the previous statement of the hostile witness to the investigating officer to elucidate the contradiction in his previous statement and what he has deposed before the court. Since the demand and acceptance is *sine qua non* for holding a person guilty of offence under Section 7 of the Prevention of Corruption Act, 1988, the prosecution in this case has failed to prove the demand of illegal gratification by the accused person.

17. Though the complaint alleged to have been given on 10.12.2001 at about 12.00 hours, it has reached the Court only at 8.45 p.m., after completion of the trap proceedings. Therefore, the contention of the appellant counsel that Ex.P8 complaint itself a make believe document and it is not the actual complaint given by PW2[Mr.Shanmugavel], seems to be probable. For all these reasons, this Court finds that benefit of doubt is to be extended to the appellant.

18. Hence, the conviction and sentence imposed on the appellant in Spl.C.No.2 of 2003 dated 29.04.2009 by the learned Special

Judge and Chief Judicial Magistrate, Chengalpattu, Kancheepuram District, is set aside and the Criminal Appeal is allowed. Bail bond if any executed by the appellant is cancelled. The Fine amount paid by the appellant shall be refunded to him.

23.11.2017

ari

Index:Yes/No

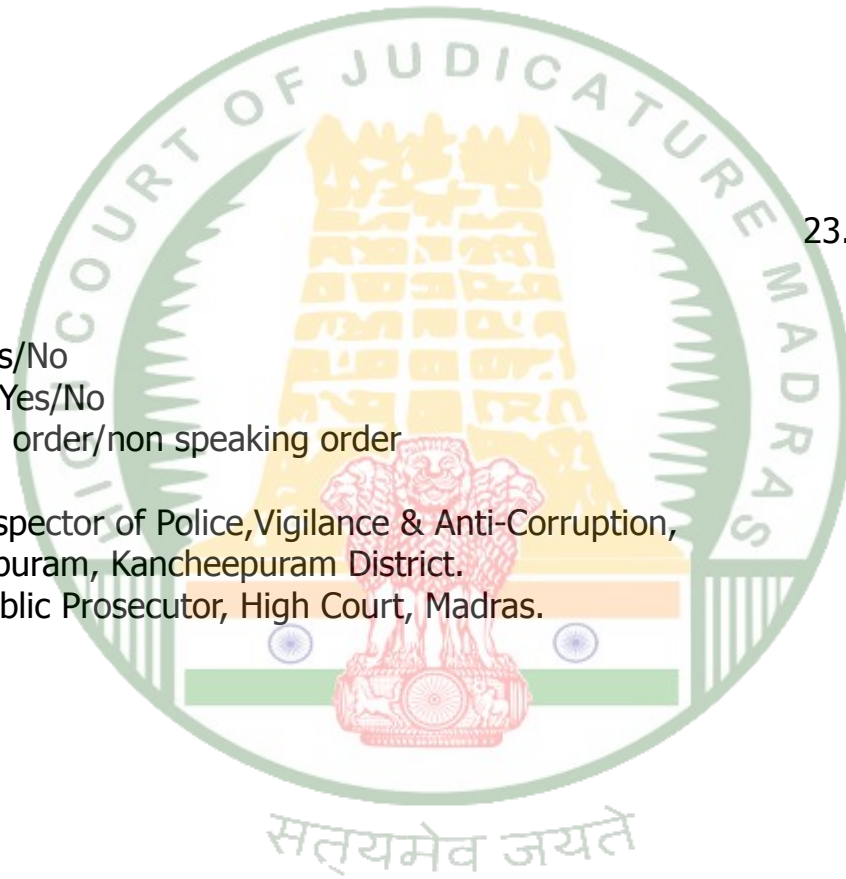
Internet:Yes/No

Speaking order/non speaking order

To

1.The Inspector of Police,Vigilance & Anti-Corruption,
Kancheepuram, Kancheepuram District.

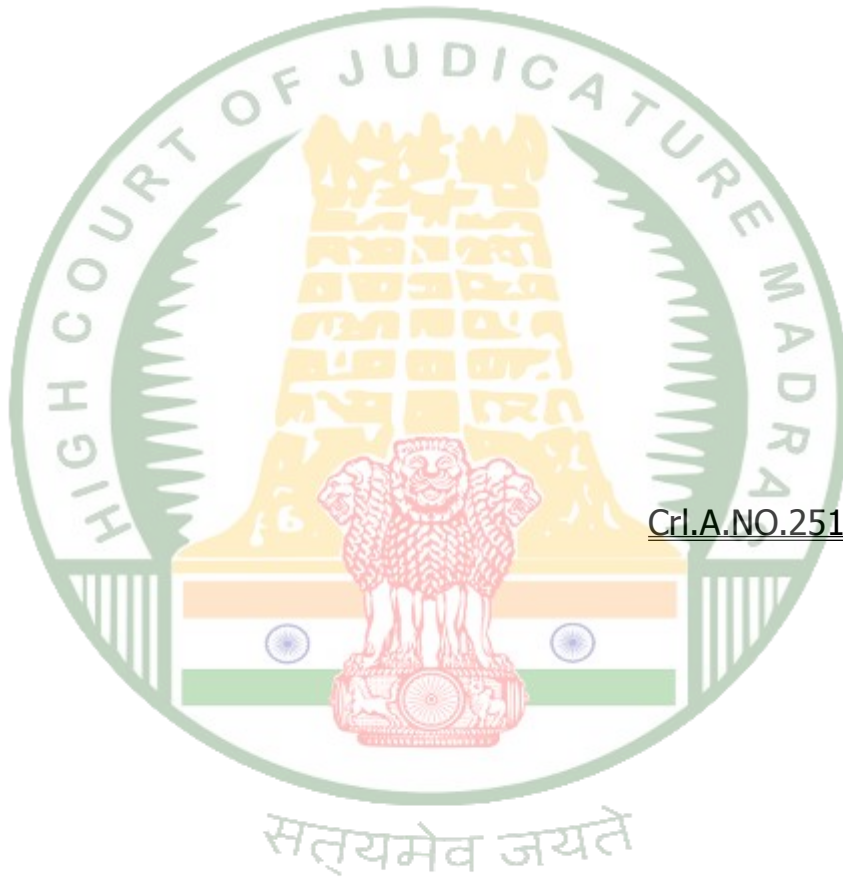
2.The Public Prosecutor, High Court, Madras.



WEB COPY

Dr.G.Jayachandran,J.

ari



Crl.A.NO.251 of 2009

WEB COPY

23.11.2017