

RESERVED ON : 07..06..2017

DELIVERED ON: 28..06..2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.Appeal No.435 of 2010

State represented by the
Additional Superintendant of Police
Vigilance and Anti Corruption
Cuddalore .. Appellant/Complainant

Vs

A.Saravanabhavan @ Saravanan
S/o. Annamalai
No.30, Othavadi Street
Pondicherry .. Respondent/ Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C.,
against the order of the Special Judge/Chief Judicial Magistrate,
Villupuram in S.C.N.2 of 2001 dated 29.11.2008 acquitting the
accused.

For Appellant : Mr. E.Raja
Additional Public Prosecutor

For Respondents : Mr. R.Natarajan

J U D G M E N T

This appeal has been preferred by the appellant/Vigilance and Anti Corruption challenging the judgment of acquittal passed against the respondent on 29.11.2008 in S.C.No.2 of 2001 on the file of the Special Judge/ Chief Judicial Magistrate, Villupuram.

2. The case of the prosecution is as follows:

(a) P.W.2/Karunanithi, the defacto complainant, is the resident of one Pallithennai village and he possessed three acres of Punja land. The accused was working as Assistant Executive Engineer, T.N.E.B Kandamangalam at Villupuram District at the relevant time. P.W.2, who is having an electrical connection No.102 in R.S.No.425 of 2014, in order to shift the same to a new bore well erected in another part of the same filed, has given an application to TNEB, Kandamangalam, Villupram District, which is marked as Ex.P2. The application dated 30.12.1999, said to have given by the complainant is marked as Ex.P3. Patta, Chitta, VAO Certificate, Land Ownership certificate and sketch are marked as Ex.P4 series. On 04.01.2000, P.W.2, met one Santhakumar, Assistant Engineer, at EB Office and as per his

request, he paid a sum of Rs.50/- towards registration of application and also obtained receipt under Ex.P5. Thereafter, since requisition was sent by EB office to get certificate with regard to underground water, P.W.2 went and appraised the Assistant Engineer that as two bore well situate in the same survey No. the said certificate is not required and the same was acceded to by the said Assistant Engineer. Thereafter, the said Santhakumar, and other officers from the EB office visited and inspected the land.

(b) On 28.3.2000, the accused Saravanabhavan along with the said Santhakumar visited the land and at that time P.W.2 stated that mere giving an application itself was not sufficient and the connection will not change automatically. After two days, again P.W.2 went to the office of the accused, but the accused was not there. However, some other person in the office told that if money is paid to the accused, he will get connection. Thereafter, P.W.2 met Santhakumar during first week of April and at that time, he informed that he has already forwarded the application to the accused.

(c) On 10.4.2000, P.W.2 met the accused in his office. At that time, the accused demanded Rs.500/- for preparing estimate. P.W.2 agreed to pay a sum of Rs.300/-, which was acceded to by the accused and informed that he will recommend for processing the application. P.W.2 informed the accused that he will come after ten (10) days. Thereafter P.W.2 went to Chennai and on 18.4.2000, again P.W.2 went to the office of the accused and at that time he was not there.

(d) On 19.4.2000, he gave written complaint to the Inspector of Police, Vigilance and Anti Corruption along with Ex.P5 receipt for registration, which is marked as EX.P6. The said complaint was registered as Crime No.5/AC/2000-C1 under Section 7 of the Prevention of Corruption Act. Based on the said complaint, the Inspector of Police, attached to the Vigilance and Anti Corruption laid a trap. Thereafter, on making necessary arrangements, the trap laying officer P.W.8, went to the office of the respondent/accused along with the witnesses.

(e) After reaching the office of the respondent/accused, the accused asked the complainant whether he brought the amount and when P.W.2 handed over Rs.300/-, the accused received the same in the presence of official witness and kept in shirt packet. At that time, P.W.2 and P.W.3 made a signal to the trap team and immediately, P.W.8 rushed into the scene of occurrence and seized the tainted money in the presence of the official witnesses. Immediately, the respondent/accused was arrested and phenolphthalein test was conducted. Thereafter, P.W.8 seized the money under Ex.P.8/ Mahazar and he also prepared Ex.P.9/Rough Sketch.

(f) P.W.9 took further investigation and also examined the witnesses and recorded their statements. After obtaining sanction order from P.W.1 and after completing the investigation, P.W.9 filed the charge sheet under Section 7 and 13 (2) read with 13(1) (d) of Prevention of Corruption Act, 1988. As the respondent/accused pleaded not guilty, the case was posted for trial.

3. Before the Court below, 9 witnesses were examined and Exs.P.1 to P.20 were marked on the side of the prosecution, apart from marking material objects, M.Os.1 to 5. On the side of the respondent / accused, no witness was examined and no material object was marked. However, Exs. D1 to D3 were marked.

4. Even though charges were levelled against the respondent under Section 7 and 13 (2) read with 13(1) (d) of Prevention of Corruption Act, 1988, the Trial Court, after considering oral and documentary evidence, had acquitted the accused from the charges levelled against him. Challenging the same, the present appeal came to be filed by the Vigilance and Anti Corruption Department.

5. The learned Additional Public Prosecutor appearing for the appellant submitted that though the demand of illegal gratification has been very well established by the prosecution, the Trial Court dismissed the case, which is not sustainable in law. The learned Additional Public Prosecutor further submitted that the evidence of P.W.2 and P.W.3 clearly established the

factum of acceptance of bribe. It is submitted that their evidence clearly proved the trap organised by P.W.9. It is further submitted that the evidence of P.W.9 would clearly prove the demand, acceptance and recovery of tainted money. It is also submitted that the Trial Court, without appreciating the evidence properly, acquitted the accused, which is not correct. Therefore, the learned Additional Public Prosecutor prayed for allowing the appeal.

6. Resisting the same, the learned counsel appearing for the respondent/accused would submit that this is a classic case to prove how a false complaint has been foisted against the innocent officer to take vengeance for the previous dispute between P.W.2 and the accused. In fact the accused has followed the procedure. The defacto complainant tapped electricity illegally without any permission, which was objected to by the accused. Besides, the accused also prepared re-estimation with regard to the electricity connection obtained by the defacto complainant and enhanced the amount payable by him, which was the reason for giving such false complaint. The

evidence of P.W.2 clearly shows that launching a case against the accused is highly motivated and only to take vengeance against the accused.

7. It is the further contention of the learned counsel for the respondent/accused that the evidence of P.W.2 and P.W.3 with regard to handing over and seizure of money is also highly doubtful. According to the learned counsel, the application for electricity connection was processed much before lodging complaint and, therefore, demanding amount by the accused for processing electricity connection is highly improbable and cannot be believed at all. The evidence of P.W.2, P.W.3 and P.W.9 in entirety clearly explicit the fact that the case is nothing but motivated one. Hence, it is submitted that the Trial Court, after appreciating the entire oral and documentary evidence, has rightly come to the conclusion that the prosecution has miserably failed to establish the guilt of the accused. Therefore, according to the learned counsel, the judgment of the Trial Court is in order and no interference is warranted.

8. I have heard the rival submission made by the learned counsel on either side and perused the materials available on record.

9. In the light of the above submission, the only point to be decided in this appeal is whether the prosecution has proved the guilt of the accused beyond reasonable doubt?

10. It is the case of the prosecution that the accused, who was working as Assistant Executive Engineer in Tamil Nadu Electricity Board, Kandamangalam, Villupuram district demanded a sum of Rs.500/- as bribe for processing the application for changing the electricity connection from one bore well to other bore well of the informant, namely, P.W.2. According to the prosecution, the accused has demanded money and trap was organised on the basis of information given by P.W.2 on 19.4.2000 and tainted money was seized from the accused and phenolphthalein test conducted was also positive.

11. On a careful analysis of the evidence of P.W.2, who is the informant, it is seen that on the basis of compliant given by him, a trap was organised by P.W.9. It is the evidence of P.W.2 that he has already had electricity connection No.102, in R.S.No.425 of 2014 and since he erected another bore well in the same R.S.No., he need change over connection to the new bore well for which he gave application to the EB office along with necessary documents, Exs. P2 to P4 Series and also paid necessary fees of Rs.50/- under Ex.P5 as instructed. His evidence further disclosed that on 28.3.2000, the accused and another executive engineer, by name, Santhakumar, visited the spot and at that time, the accused told him that mere giving application would not sufficient. Thereafter, he wanted to meet the accused however, the accused was not there. Thereafter, he met the accused in the office on 10.4.2000 and enquired about the change of connection and at that time, the accused demanded Rs.500/- as bribe. However, P.W.2 told the accused that he prepared to give Rs.300/- and will come after 10 days. Thereafter, on 18.4.2000, he went to see the accused. However,

the accused was not in the office. Hence, he lodged complaint Ex.P6 to P.W.9.

12. On a careful perusal of the entire evidence of P.W.2 with regard to the demand, it is seen that though he deposed that on 28.3.2000, the accused along with Santhakumar, another engineer, visited the spot and at that time, the accused told P.W.2 that mere giving application would not sufficient, his evidence does not prove the actual money demanded by the accused on 28.3.2000. Mere informing P.W.2 that giving application would not be sufficient and connection would not be changed automatically, itself cannot be taken as a demand at all.

13. Though it is the evidence of P.W.2 that on 10.4.2000, he met the accused in his office and at that time, the accused demanded Rs.500/- for processing the application and that he agreed to pay Rs.300/-, it is to be noted that the entire evidence of P.W.2 would clearly indicate that from 28.3.2000 P.W.2 had visited the office of the accused on several times, but the accused was not there. Finally, on 10.4.2000, the accused said

to have demanded Rs.500/- and P.W.2 said to have agreed to pay Rs.300/- as a bribe but, immediately, he never met the accused. It is also the evidence of P.W.2 that on 18.4.2000, he went to the office of the accused, however, the accused was not there and, therefore, he straightaway lodged compliant on 19.4.2000. This conduct of P.W.2 assume significance. If really the demand was made to process the application as early as on 10.4.2000, then the normal conduct of the human being would be to take some action immediately. But his own evidence of P.W.2 itself clearly indicate that he actually went to Chennai and again on 18.4.2000, he went to the office of the accused and enquired about the accused. However, since the accused was not there, he straightaway went to the Vigilance and Anti Corruption Department and lodged compliant, Ex.P6. This aspect of the evidence of P.W.2 is carefully read with other evidence, the evidence of P.W.2 cannot be given much importance and its suffers from serious doubt and in fact, with serious motive also. His own evidence itself clearly indicate that he has been illegally tapping the electricity connection from other bore well without any permission, whatsoever, from the electricity Department.

14. In the cross examination, P.W.2 has stated that the accused, at the time of inspection has, threatened P.W.2 for illegally tapping electricity connection and also threatened him that he will impose penalty on P.W.2. Further, his evidence would also clearly indicate that PW.2 has given an application at the end of 1999 and the same was originally processed and estimation for a sum of Rs.735/- was prepared. As per the evidence of P.W.4 and P.W.5, thereafter, re-estimation was done and the amount was enhanced to Rs.4870/-. The evidence of P.W.4 and P.W.5 would clearly show that re-estimation was done as early as on 31.3.2000 itself. Further, evidence of P.W.5 would also clearly show that after re-estimation, the accused has forwarded the same to the Executive Engineer for issuance of change of electricity connection. The evidence of P.W.4 further shows that aggrieved over enhancement in re-estimation, P.W.2, came to the office 2 or 3 times and shouted and also said that he will see the accused.

15. In this regard, when Exs.D1 and D2 dated 28.3.2000 are carefully perused, it is seen that re-estimation to an extent of

Rs.4,700/- was arrived by the executive engineer. In fact, executive engineer has signed the same on 11.4.2000. This application has already been forwarded to the executive engineer as early as on 31.3.2000. Therefore, demanding a sum of Rs.300 or Rs.500/- by the accused for processing the application is highly unbelievable and creates serious doubt about the version of P.W.2. The evidence of P.W.2, P.W.3 and P.W.4 would clearly indicate that P.W.2 has serious grudge over the accused in preparing re-estimation. Their evidence also shows that the accused warned P.W.2 for his illegal tapping of electricity connection and also threatened him that he will impose penalty on him for such activity. Therefore, the complaint given by P.W.2 belatedly, i.e after 9 days from the date of alleged demand by the accused creates serious doubt. The delay in lodging such complaint also gives an inference about the possibility of foisting false complaint against the officer, who points out certain violation done by P.W.2.

16. Admittedly, P.W.3 one of the officer from the collectorate office was accompanying the trap. He has spoken

about the trap. When the evidence of P.W.3 is carefully perused, in his cross examination, he has stated that the office of the accused has only one entrance. He has also deposed that P.W.2 has handed over money to the accused in a cover and the accused received the cover. Whereas, P.W.2 in his evidence, has stated that he has given three 100/- rupees note and he has never spoken about the handing over of cover to the accused. P.W.2 in his evidence has further stated that the office of the accused has three entrance. This aspect of evidence of P.W.2 and P.W.3 is also highly inconsistent with each other. Therefore the alleged trap in the presence of P.W.3 itself is also highly doubtful. P.W.2 himself, in his evidence, has categorically admitted that even before lodging complaint, work order was placed and order was sanctioned. That being so, demanding of Rs.500/- by the accused, after order has been passed, is highly improbable and creates serious doubt about the case of the prosecution.

17. Though P.W.3 has spoken about the demonstration with regard to the conduct of Phenolphthalein test by the trap team and also deposed that he went to the office of the accused along

with P.W.2, his evidence with regard to the entrance to the office of the accused and handing over of cover is highly contradictory with the evidence of P.W.2. Though, law is well settled that minor inconsistencies cannot be given much importance, the inconsistency found in the evidence of P.W.2 and P.W.3 with regard to the handing over of cover and entrance to the office of the accused cannot be ignored in the light of serious motive attributed in the mind of P.W.2, particularly when he was warned by the accused with regard to imposing of penalty for his illegal tapping of the electricity. Further, the evidence of P.W.2 that on 28.3.2000, when the accused and one Santhakumar inspected his land, the accused indirectly demanded the amount is also not found place in the FIR and the said evidence is improved during trial.

18. Though the evidence of P.W.8 proves the conduct of phenolphthalein test, which is also positive, this Court, in the light of the improved version of P.W.2 and also the serious motive attributed, is of the view that his evidence is highly unreliable. That apart, the evidence of P.W.2 and P.W.3 with

regard to the handing over of money to the accused also creates serious doubt about the case of prosecution. Further, official witnesses have also not been examined by the prosecution. More so, seizure mahazar was also sent to the Court on the next day. A delay in sending seizure mahazar has also not been explained by the prosecution properly. The seizure mahazar also does not speak about the seizure of money in a cover which also creates serious doubt about the evidence of P.W.3, who was accompanying P.W.2 as witnesses.

19. Admittedly, work order has been issued by the Executive Engineer on the basis of the letter forwarded by the accused on 31.3.2003 and work order was issued on 11.4.2004 itself. Therefore, the possibility of giving false complaint against the accused, who forwarded the application and prepared re-estimation enhancing the amount, also cannot be ruled out. The delay in lodging the complaint, that too, after nine days from the date of the alleged demand, in fact, clearly probabalise the case of the accused that he has been falsely implicated by P.W.2. Hence, once the prosecution witness itself is doubtful and their

testimony is attached with serious motive as against the public servant, who has admittedly warned the defacto complainant for imposing penalty for his illegal tapping of the electricity connection, it is unsafe to rely upon such prosecution witnesses. Therefore, the fact that trap was organised and conducted in the manner known to law by the investigating officer, the same cannot be a ground to rely upon the entire version of prosecution. Once the evidence of the prosecution witness is attached with serious motive, false implication as alleged by the accused also cannot be ruled out.

20. In these circumstances, this Court, on analysing the entire evidence, is of the view that the evidence of P.W.2 is not all reliable one. That apart the evidence of P.W.3 also creates serious doubt about the seizure of tainted money. All these factors are taken into consideration, this Court is of the view that the charges framed against the accused have not been proved beyond reasonable doubt and hence, the Trial Court, after considering the matter in a proper perspective, has rightly extended the benefit of doubt to the accused. This Court, as

discussed above, also found that the prosecution has not proved the guilt of the accused beyond reasonable doubt. Hence, the judgment of the Trial Court extending the benefit of doubt to the accused is a well reasoned one and the same does not warrant interference by this Court. Accordingly, the appeal is liable to be dismissed.

21. In fine,

(a) The **Criminal Appeal is dismissed.**

(b) The judgment of acquittal passed by the Special Judge, Chief Judicial Magistrate, Villupuram District on 29.11.2008 in S.C.No.2 of 2001 is hereby confirmed.

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28..06.2017

To

1. The Special Judge, Chief Judicial Magistrate, Villupuram
- 2.The Additional Public Prosecutor, High Court of Madras
- 3.Record Keeper, Criminal Section, High Court of Madras.

N.SATHISH KUMAR, J.

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**Pre delivery judgment in
Crl.Appeal No.435 of 2010**

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