

IN THE HIGH COURT JUDICATURE AT MADRAS

Reserved on : 31.08.2017

Pronounced on : 05.09.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.No.368 of 2008

Ramalingam

... Appellant

/versus/

State Rep.by
Inspector of Police,
Vigilance and Anti Corruption,
Nagapattinam,
Crime No.6 of 2004.

.. Respondent

Criminal Appeal has been filed under Section 374 (2) of CrI.P.C., praying to set aside the judgment passed in Special C.C.No.6 of 2006, dated 28.04.2008 on the file of Chief Judicial Magistrate, Nagapattinam.

For Appellant :Mr.P.Ezhilnilavan

For Respondent :Mr.R.Ravichandran, GA(crl.side)

ORDER

This is an appeal preferred by the first accused against the judgment of conviction and sentence imposed by the trial Court for the charges under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. Brief facts of the case is that the appellant, who is arrayed as A1 alongwith one Raja Rajeswari, who is arrayed as A2, were working as Superintendent and Supervisor Grade I respectively at Kuthalam Child Development Project Office during the relevant period. One Smt.Jaya, who was working as Aaya in Anganvadi Centre, Thiruvaduthurai retired from her service on 30.06.2002 and her Special Provident Fund of Rs.6,050/- was not disbursed to her even after two years from her retirement. Hence, she approached the appellant(A1) and Rajarajeswari(A2) for which they have demanded Rs.500/-. Therefore, on 12.07.2004, Smt.Jaya gave a complaint to the Inspector of Police, Vigilance and Anti-Corruption, Manjakollai. On receipt of the complaint, the respondent police arranged for a trap. Witnesses for the trap proceedings were organized. The defacto complainant and one Rajagopalan have gone to the office of the appellant on demand. The defacto complainant had given tainted money of Rs.500/- to the appellant and the same has been witnessed by Rajagopalan, who was examined as PW2. Thereafter, the investigation team has apprehended the appellant (A1) after conducting seizure of Rs.500/-. After investigation, a final report has been filed against the appellant and Rajarajeswari(A2).

3. The prosecution has examined 11 witnesses and marked 20 exhibits along with 5 material objects. On the side of the accused, no witnesses or

exhibits were marked. After appreciating the evidence, the trial Court found the appellant (A1) guilty for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988. The second accused was acquitted for want of evidence.

4. Aggrieved by the conviction and sentence, the present appeal has been preferred on the ground that the trial Court has failed to appreciate the explanation given by the accused that Rs.500/- was given to him towards incidental expenses for preparing the pension papers of the defacto complainant and there was no evidence to show that there was a demand of illegal gratification by the appellant.

5. Further, when the defacto complainant alleged that there was a demand of illegal gratification on 01.07.2004, the complaint was lodged only on 12.07.2004, in which the delay of 7 days has not been explained, which caused doubt upon the prosecution case, however, over looking the same, the trial Court has convicted the appellant.

6. Further, it is also submitted by the learned counsel appearing for the appellant that when the second accused has been acquitted for want of evidence, the same benefit should have been extended to the appellant/1st

accused and also the benefit of doubt is to be given to him. When there is no corroboration for demand or acceptance based on the interested witness PW2, the trial Court ought not to have convicted the appellant/A1.

7. Further, the learned counsel appearing for the appellant contended that, the Manual of the respondent Department under Rule 49 specifies that whenever there is a trap proceeding, site plan must be preferred by the Investigating Officer. In this case, the prosecution neither prepared the the site plan nor placed it before this Court to appreciate the veracity of the evidence given by PW3, the so called witness for demand and acceptance. In this context, the learned counsel appearing for the appellant read over the deposition of PW2, wherein he has stated that he was hiding and witnessing the occurrence of demand and acceptance of money by the appellant/A1. Without site plan, whether such portion of the evidence could be accepted is the doubt raised by the learned counsel appearing for the appellant.

8. Similarly, while Rule 47 of the Vigilance Manual instructed the Investigating Officer to put a question to the accused in a trap proceedings so as to ascertain the reason for tainted money being in his possession. Since there is no such explanation recorded from the accused, the investigation has bristles with infirmity. However, the trial Court, without considering all these infirmities, has convicted the appellant/A1.

9. Yet another submission made by the learned counsel appearing for the appellant is that both PW1 and PW2 have spoken about the acceptance of the money by the accused. While deposing, they have categorically stated that the accused had received the money and kept it in his left side of drawer. Whereas the money has been recovered from the pant pocket of the accused and phenolphthalein test has also been conducted on the portion of the pant where the money was alleged to have been kept. The phenolphthalein test is found to be positive from the analysis report marked as Ex.P8. Since the place of recovery of the tainted money has not been corroborated by PW1 and PW2, the very same recovery itself is doubtful and based on the doubtful recovery, the appellant/A1 ought not to have convicted.

10. As a reply to the above submissions, the learned Government Advocate (Crl.side) pointed out that both PW1 and PW2, after giving the tainted money to the appellant/A1 have come out from the room and gave the pre-arranged signal to the police party. The money was recovered from the accused which was kept in his ticket pocket of the pant. This has been explained by the Investigating Officer examined as PW9. Further, the learned Government Advocate (Crl.Side), referring to the seizure mahazar marked as Ex.P6, submitted that the seizure mahazar being a contemporaneous document explains how the

tainted money received by the appellant initially kept in the left side drawer was taken by him and kept in his pocket, after PW1 and PW2 left the room.

11. Precisely, PW1 and PW2 could say only about the initial place where the accused kept the tainted money after receiving it is that they were not aware of the subsequent movement of the money from the table drawer to the ticket pocket of the accused.

12. In so far as the non-compliance of the mandate of the Manual, the learned Government Advocate, referring to the judgment of this Court in ***K.Selvaraj and others v. The State reported in 2004 CrI.L.J. 3754***, submitted the Vigilance Manual gives administrative guidelines to the officers involved in the investigation. They are all directory in nature and not mandatory one. Any violation or aberration of the procedure per se will not render the prosecution version void. Further, the learned Government Advocate also referring to the recent judgment of the Hon'ble Supreme Court in ***Mukhtiar Singh v. State of Punjab reported in 2016 CrI.L.J.1491*** submitted that once the prosecution has proved the acceptance of the tainted money by the accused, the presumption under Section 20 comes into play and it is the duty of the accused to explain how the tainted money has come into his possession.

13. In the light of the rival submissions made by the learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondent, it is essential to ascertain, whether there was any acceptance of tainted money by the appellant and whether it was towards illegal gratification. For that purpose, the evidence of PW1, who is an illiterate retired-menial servant has to be considered as an evidence of a rustic witness, who could only say about the broad sequence of events and court cannot expect niceties or precision in her deposition. PW1 in her evidence has stated that she visited the office of the accused and met both the appellant and the 2nd accused in connection with her pension paper. They demanded Rs.500/- and she negotiated for lesser amount, but could not fructify and she had later reconciled to the fact that to get Rs.6050/-, she has to spend Rs.500/-. Only thereafter, she has gone to the respondent police with the complaint. The said complaint is dated 12.07.2004. The next day, the respondent police have arranged for the trap. PW1 has been accompanied by another witness PW2. In his evidence, PW2 has deposed that since the accused has instructed PW1 to come alone he could not go with PW1 to the place where the accused received the money, so he hide himself and watched the proceedings at some distance. Since there is no site plan, this Court is not able to appreciate this portion of the evidence rendered by PW2, whether he had hidden himself in a vantage position, which could enable him to see the happenings and over hearing the conversation between the accused and PW1.

14. Be that as it may. Even if this portion of the evidence is disbelieved, the other clinching evidence, which proves the recovery of tainted money from the appellant/accused, cannot be doubted.

15. Learned counsel appearing for the appellant emphasised the point that the case of the prosecution is that the money was recovered from the pant pocket of the accused, whereas the person who gave the money and witnessed the acceptance of money has said that the money was received by the accused and kept in the drawer. On this aspect, the submission made by the learned Government Advocate deserves acceptance, since the contemporaneous documents namely recovery mahazar Ex.P6 clearly speaks about what happened to the money received by the accused. He first kept the money in the drawer then kept it in his pant pocket. This has been reiterated by the trap laying officer PW9 in his evidence.

16. It is not the case of the appellant/accused that he did not receive the money, but has given an explanation that he received money to meet out the incidental expenses for preparing the provident fund papers of the defacto complainant.

17. In such circumstances, when there is a clear evidence both documentary as well as ocular to prove the recovery of money from the accused, the point to be seen is whether the money was received for illegal gratification or for any other purpose. For that, the explanation given by the appellant has to be tested.

18. In this context, the evidence of PW6 in this context gains significance. He has spoken about the events which happened on the previous day of trap. There had been some discussion regarding money to be paid for processing the pension paper of the defacto complainant. The bare fact remains that even after two years of retirement, PW1 was not paid the Special Provident Fund and she had been visiting the accused office for the same. When the recovery of tainted money is proved, the burden of proof that tainted money was received for some legal purpose shifts on the person who had received the money. In this case, not even a plausible explanation has been put forth by the appellant for receipt of the tainted money.

19. The learned counsel appearing for the appellant relied upon the judgment of this Court rendered in ***State by: Inspector of Police, Vigilance and Anti Corruption, Vellore v. M.L.Rajan Asst. Educational Officer, Timir, Arcot Taluk reported in 2013-2 L.W. (Crl.)157***, wherein this Court

has held that it is incumbent upon the investigating officer to record the statement of the accused immediately after the trap as per Rule 47 of the Manual. The failure on the part of the trap laying officer to record statement from the accused immediately after the arrest would vitiate the entire proceedings. This judgment is contrary to the earlier judgment of this Court in ***K.Selvaraj and others v. The State reported in 2004 CRI.L.J.3754*** which has categorically stated that this guideline is only directory and not mandatory.

20. It is to be recorded at this juncture that any violation or omission to follow the Manual of the Department at the most may make the prosecution case weak, but not vitiate in toto. The trial Court has acquitted the second accused on the ground that the 2nd accused was not present, when the tainted money was received by the appellant/A1.

21. There is no evidence to link A2 with the acceptance of money by the appellant/A1. Since A2 was not present in office at that time and there is also no material evidence to fix the second accused for any demand of illegal gratification. Hence, the trial Court has rightly acquitted the second accused and convicted A1 for accepting the illegal gratification. The reasoning given for the acquittal of A2 is not available for A1, since he has both demanded and accepted the money and failed to give any plausible explanation for possession

of tainted money with him. The reasons stated in the trial Court judgment for holding the appellant/first accused guilty of charges are acceptable both under law and fact, hence, required no interference.

22. For the aforesaid reasons, this Criminal Appeal is dismissed.

05.09.2017

Index:Yes

Internet:Yes

ari

Speaking order/NonSpeaking order

To

The Chief Judicial Magistrate, Nagapattinam.

The Public Prosecutor, High Court, Madras.



WEB COPY

Dr.G.Jayachandran,J.

ari



Pre-delivery Judgment made in
Crl.A.No.368 of 2008

WEB COPY

05.09.2017