

Bail Slip

The petitioner/Accused viz., V.Prabakar, S/o.Venkatesan, is directed to be released on bail as per order of this Court dt.11.1.2016 and made in CrI.MP.No.257 of 2016 in CrI.A.NO.18 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.05.2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

CrI. Appeal No 18 of 2016
against
c.c..No.45 of 2013

(On the file of the learned Special Judge (CBI Cases XIII
Addl. Sessions Judge, Chennai)

V. Prabakar ... Appellant

Versus

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai
(CBI/ACB/Chennai RC MA1 2013 A0034) ... Respondent

Prayer:

Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure as against the order of conviction and sentence dated 22.12.2015 and made in CC No.45 of 2013 on the file of the Learned Special Judge for CBI Cases (XIIIth Additional Judge), Chennai.

Appearance

For petitioners: Mr. V. Paarthiban, learned Counsel

For Respondents: Mr. K. Sreenivasan, learned Special Public
Prosecutor for CBI Cases

JUDGEMENT

This memorandum of criminal appeal has been directed under Section 374 (2) of the Code of Criminal Procedure as against the order of conviction and sentence dated 22.12.2015 and made in the calendar case in CC No.45 of 2013 on the file of the Learned Special Judge (for CBI Cases) (XIIIth Additional Judge), Chennai.

2. The appellant had been facing the charges under
<https://hcservices.ecourts.gov.in/hcservices/>

Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988, on the file of the Learned Special Judge (for CBI Cases) (XIII Additional Judge), Chennai. He was tried for the above said offences and ultimately the learned Special Judge (for CBI Cases) had found him guilty under the above said offences convicting there under and sentencing to suffer 2 years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default to suffer a further period of 3 months of simple imprisonment for the offence under Section 7 of the Act. He was also sentenced to suffer 2 years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default to suffer a further period of 3 months of simple imprisonment for the offence under Section 13(2)r/w 13 (1) (d) of PC Act, 1988. The sentences were directed to run concurrently. The appellant had already paid the total fine amount of Rs.20,000/- on receipt.

3. Challenging the correctness of the order of conviction and sentence, the appellant stands before this court with this appeal.

Sub Section 1 of Section 20 of the Prevention of Corruption Act enacts,

4. that where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or Clause (b) of sub section 1 of section (13) it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

Sub Sec 3

5. Notwithstanding anything is contained in sub sections (1) and (2), the Court may declined to draw the presumption refer to in either of the said sub sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of correction may fairly be drawn.

6. With reference to the meaning of demand, this Court would like to say, that the position is this that more often than not the acceptance itself would be a proof of the demand. In many a case it would be a circumstantial piece of evidence. The evidence required to be led by the prosecution for proving the demand, if the acceptance is proved, would be a very slight character.

7. Quite often than not, the acceptance spells "demands" because no public officer can dream of accepting any moneys from a stranger without there being some pre-existing cause

for the same and such cause would amount to "demand". But that apart, be reading into the section, the necessity of demand a good deal of injury is caused to the section.

8. The intent of this section is to do away with the proof of certain things which are obvious, but the evidence of which would be very long finding. The plain reading of Section 4 is that not only the proof of the fact that the purpose of the acceptance is dispensed with, but even the proof of the making of the demand is dispensed with.

9. The very acceptance bears upon itself the stamp of illegal gratification. No one accepts illegal gratification as a motive or reward without there being a nexus between the acceptances for the purpose. "The demand" is implicit in this entire offence (See: Manik Shrirang Garikwad Vs State of Maharashtra, 1989 CrL. L J 2268 (Bom.)).

10. The gravamen of the prosecution case is:

The appellant Mr. V. Prabakar was working as Deputy Chief Mechanical Engineer (ES & CH) at Chennai Port Trust. P.W.2 Mr. Mir Iqbal Ali was working as Operations Manager for M/s. Hunter Shipping and Trading Company which is a proprietary concern owned by one G. Chandramohan. This concern was engaged in agents and steamer agents. They came up in occupation of a plot on lease at Chennai Port Trust measuring to an extent to 6,830 Sq. mts. which was originally taken on lease in the year 2010. The lease was for a period of 11 months and it had to be renewed periodically.

11. That M/s. Hunter Shipping and Trading had addressed a letter dated 20.6.2013 (Ex.P10) to the Deputy Chief Mechanical Engineer (ES & CH) Chennai Port Trust and thereby requested to continue the electricity power supply to their newly allotted plot. Obviously, M/s. Hunter Shipping and Trading had already deposited a sum of Rs.18,600/- towards the security deposit. When PW2 Mr. Mir Iqbal Alii had met the appellant Mr. Prabakar on 19.7.2013 at his office at Port Trust for the allotment of 1000 watts electricity service connection, he had asked PW2 to pay an additional security deposit of Rs.23,210/-. The demand of additional security deposit of Rs.23,210/- was protested by PW2 as they had already paid the security deposit earlier to the extent of Rs.18,600/-. The demand of additional security deposit raised by the appellant Mr. Prabakar has been marked as (Ex.P12). When this demand was brought to the notice of Mr. G. Chandramohan who is the proprietor of M/s. Hunter Shipping and Trading, he had insisted PW2 to pay the fresh demand, provided the earlier security deposit being refunded to them.

12. That on 31.7.2013, when PW2 Mr. Mir Iqbal Alii had met the appellant Mr. Prabakar at his office along with his colleague one Mr. S. Nithyanandam and explained him about

their firms position, the appellant Mr. Prabakar had told him that he would consider their request provided a sum of Rs.25,000/- is paid to him. When the demand made by the appellant Mr. Prabakar was brought to the notice of Mr. G. Chandramohan proprietor of M/s. Hunter Shipping and Trading, he had told that when the demand for the additional security deposit itself was only Rs.23,210/- why a sum of Rs.25,000/- should be paid to the appellant.

13. That on 1.8.2013, when PW2 Mr.Mir Iqbal Ali had met the appellant at his office he had replied the difficulty to meet out the demand made by him. At that time Mr. Prabakar had made it clear that unless his demand of Rs.25,000/- was complied with the power supply would not be allowed to continue.

14. That on 3.8.2013, for the 3rd time the appellant Mr. Prabakar had called P.W.2 (complainant) through his mobile phone bearing No.9385225274 and re-iterated his earlier demand.

15. According to PW2, since there was no other go excepting to lodge a compliant, he had approached the Deputy Inspector General of Police (CBI), and lodged a compliant on 5.8.2013 after getting concurrence from his proprietor Mr.G.Chandramohan.

16. It is obvious to note here, that as it is seen from Ex.P.12, for the provision of temporary power supply to M/s. Hunter Shipping and Trading at BD-2, Area-1 for the period upto 31.5.2014 the fixed security deposit demanded from the office of the appellant Mr. Prabakar is only Rs.23,210/-. According to PW2, for the refund of earlier deposit of Rs.18,600/-, the appellant Mr.Prabakar was said to have demanded a sum of Rs.25,000/-. With reference to this demand, PW1 Mr. Athulya Misra, who was the then Chairman of Chennai Port Trust in his cross examination has stated that:

"During my consideration for sanction I considered that in the normal course of event nobody will pay bribe of Rs.25,000/- when he is legally entitled for the power supply by paying a lesser amount."

17. It is significant to note here that Ex.P.1 sanction order granted by PW1 for launching prosecution against the appellant does not contain the date on which he had received the requisition from CBI for granting sanction. Secondly, Ex.P.1 sanction order does not speak about the power of P.W.1 being the Chairman to remove the officer in the rank of Deputy Chief Mechanical Engineer. Thirdly, Ex.P.1 does not speak about the fact that PW1 being the Chairman is the competed Authority to appoint any officer in the rank of Deputy Chief Mechanical Engineer.

easily be understood that if the complainant (PW2) had paid the official demand of Rs.23,210/- (Ex.P.12) he is legally entitled to get the temporary electricity supply. When such being the case where is the question of demand of Rs.25,000/-.

19. From the answer of PW1, this Court finds that the alleged demand made by the appellant is improbable.

20. As admitted by PW2 (complainant) in his chief-examination, for lodging a complaint as against the appellant he was not authorized in writing by his proprietor Mr. Chandramohan. It may also be relevant note here that the said Chandramohan was not examined as a witness on the side of prosecution. PW2 in his Chief- examination has stated that he had decided to make a complaint in CBI, in respect of the demand made by the appellant. In this connection, he has stated that after getting concurrence from his proprietor he had lodged the complaint on 5.8.2013.

21. As discussed in the proceedings paragraph, there is no such concurrence in writing from his proprietor. Admittedly he was working as Operation Manager in M/s. Hunter Shipping and Trading, which is a proprietorship concern owned by one MR. G. Chandramohan. Since PW2 was working as an employee in the above said concern, he cannot individually take any decision without any authorization. In his cross examination PW2 had admitted that he was authorized through a power of attorney to deal with customs and port related matters. He has admitted that Mr. G. Chandramohan, proprietor was handling as well supervising the day to day activities of the concern. He has further admitted that CBI did not collect the power of attorney issued in his favour by Mr. Chandramohan.

22. From the perusal of the Chief examination of PW2 this court finds that PW2 did not speak about the presence of two independent witnesses when he had met the Deputy Inspector General of Police (CBI). Even he did not speak about the fact that those two witnesses were introduced to him by the Deputy Inspector General of Police and that the contents of the complaint were explained to them.

23. PW2 in his chief examination has deposed that at about 1.15 p.m. he had reached the office of the appellant, and entered his cabin along with two witnesses. At that time the appellant Mr. Prabakar had enquired him about the other 2 persons who had accompanied him. For which he had replied that they were his accounts staffs. Then Mr. Prabakar had asked as to whether he had brought the cash and only thereafter he had taken out the cash from his left side shirt pocket and tried to hand over the amount to the appellant. But he told him to keep the amount on his table. Accordingly, he had placed the money on his table in the presence of his 2 witnesses who accompanied him.

24. As per the evidence (in Chief) of PW2, the appellant Mr. Prabakar had not received this amount in his hand. Even he did not touch the tainted currency notes. When such is the case of the prosecution, how the water could have turned into

pink colour when he was asked to dip his fingers in the water contained in a tumbler. This piece of evidence adduced by PW2, leads the court to draw adverse inference against the case of prosecution. Therefore, the alleged demand as well as the acceptance of money, which are the two ingredients to be proved by the prosecution in a corruption case, are absent in this case.

25. PW10 Mr. S. Nithyanandam who is the co-employee of PW2 has stated that in connection with the renewal of power supply he along with PW2 had been to the office of the appellant. While so, he had asked PW2 to pay the security deposits. For which they had replied that the amount could be deposited only after getting permission from their office. Then the appellant had demanded extra amount for moving the file. But PW10 didn't say as to how much he had demanded? It is relevant note here that there is no documentary evidence to show that he had entered the office of appellant along with PW2 on the particular date. According to him he didn't sign any of the registers which were maintained either in the Port Trust Office or in the Office of the appellant with regard to the particulars of visitors.

26. PW5 Mr. S. Jayakumar is the Trap Laying Officer. In his chief examination He has stated that "I entered the cabin by knocking the door and introduced myself to the person who was sitting inside the cabin, wearing a blue shirt. The person also confirmed his identity as Mr. V. Prabakar, Deputy Chief Mechanical Engineer. The complainant (PW2) other witness Mr. Dakshinamoorthy (PW3) also came inside the cabin along with other team members. I asked Mr. V. Prabakar, if he had accepted Rs.25,000/- from P.W.2 Mr.Mir Iqbal Ali He however did not speak anything for a moment. On further questioning he gestured towards the left side of the table where a wade of currency notes was found. I asked Mr. Umesh Prabhu, Police Constable (not examined) to prepare sodium carbonate solution in a glass tumbler. I instructed Mr. Prabakar to dip his right hand into the glass tumbler. The solution turned light pink in colour."

27. He has also stated that "I then recorded the arrest of Mr. V. Prabakar at 2.30 p.m. I then asked Mr. Dakshinamoorthy (PW3) and the other witnesses to pick the currency notes from the left side of the table and found tallied with the serial numbers of the currency notes recorded in the entrustment Mahazar (Ex.P.14). The currency notes were marked as M01.

28. PW3 & PW4 are the independent official witnesses as well as shadow witnesses. PW3 has stated in his chief examination that the cash was found on the table. PW4 has corroborated the evidence of PW3. From the testimonies of PW3 & PW4 this court finds that both of them used to stand as witnesses in several CBI cases. In this connection, Mr. V. Parthiban, Learned counsel for the appellant had submitted

that their testimonies had lost their credit worthiness and since they are the stock witnesses of CBI their evidence might be discarded. PW2 has already deposed that he was asked by the appellant to place the money on the left side of the table. PW5 has also stated that the currency notes were found on the left side of the table of the appellant. PW3 & PW4 have corroborated the testimonies of PW2 & PW5. When the money was found on the left side of the table till PW's entry in the chamber of the appellant, the chance of turning the water contained in the glass tumbler into light pink colour will not arise. The prosecution has miserably failed to prove the allegation that the appellant had either received the money in his hand or touched the tainted currency notes.

29. In Ex. P.15 recovery mahazar proceedings, in the last paragraph of Pg.153 of the typed set of papers it is stated, that on questioning "Shri. V. Prabakar, Deputy Chief Mechanical Engineer, by the TLO, he explained in the presence of independent witnesses, that after Mr.Mir Iqbal Ali and his Accounts Manager (accompanying witness) left his chamber, he took the bribe amount of Rs.25,000/- lying on his table by using his left hand for counting the same. At that time he felt some one knocking on his door and hence kept the same in its original place on the table." This is highly unbelievable and improbable. At Page No.151 of the typed set of papers (in Ex.P.15) recovery mahazar proceeding in the middle it is stated that the TLO questioned him as to whether he had demanded and accepted a sum of Rs.25,000/- just now from Mr.Mir Iqbal Ali. Shri. V. Prabakar did not answer but kept silent. Again the TLO repeated the question. At this juncture he nodded his head seeing the money which was found on his table.

30. With reference to motive for foisting the case against the appellant Mr. V. Parthiban, Learned Counsel for the appellant has drawn the attention of this court to the last 5 lines of typed set of papers. Wherein PW2 has stated that "I went back without any decision and on 3.8.2013 Mr. Prabakar called me on my cell phone 9385225274 between 1 and 2 p.m. and repeated the demand of bribe in a harsh language. I therefore decided that there is no option left except to make a compliant in CBI about the demand made with the concurrence of my proprietor.

31 According to Mr. V. Parthiban, Learned Counsel the harsh words uttered by the Appellant through phone had instigated the complainant (PW2) to lodge the false complaint against appellant.

32. Even in his cross examination also Pw2 has spoken to about the motive for lodging the complaint against the appellant. PW8 Mr. P. Shanmuganathan was the Chief Mechanical Engineer of Chennai Port Trust. Seven Deputy Chief Mechanical Engineers were functioning under him. The appellant was also one of them functioning under PW8. In his cross examination PW8 has stated that when the appellant was functioning as the Deputy Chief Mechanical Engineer there was a huge arrears of electricity charges. The appellant alone

had regularized and taken Strenuous efforts for the recovery of the arrears of electricity charges.

33. As per the evidence of PW2 the appellant had uttered the harsh words over phone and repeated the demand of bribe on 3.8.2013. He therefore decided to lodge the complaint in CBI as there was no option except to make the compliant. Virtually he had lodged complaint with Deputy Inspector General of Police, CBI on 5.8.2013. Therefore there was a delay of 3 days in lodging compliant.

34. On the other hand Mr. K. Sreenivasan, Learned Special Public Prosecutor, CBI Cases has submitted that PW2, Pw3, PW5 and PW10 had spoken to about the demand made by the appellant as well as his acceptance of bribe amount. He has also contended that on 3.8.2013 the appellant had reiterated his earlier demand after abusing PW2 with harsh language.

35. As it is seen from PW2's evidence the appellant had made his 1st demand on 31.7.2013 at about 11 a.m. but the complaint was lodged on 5.8.2013. It is therefore clear that PW2 had chosen to lodge the compliant only after passing of 5 days. Hence there is an abnormal delay in lodging the compliant.

36. The Special Public Prosecutor has also taken this court through the evidence of PW10 Mr. Nithyanandan who is none other than the co-employee of PW2. In his chief examination he has stated that when he, along with the appellant went to the office of appellant, he had asked them to pay the security deposits for which they had replied that they could not pay the security deposit on their own accord and it could be deposited only after getting permission from their office. For which according to PW10 the appellant had asked them to pay extra amount for setting all things at right. The evidence of PW10 has already been discussed in the earlier paragraphs. It is pertinent to note here that PW10 did not say as to how much the appellant had demand towards extra amount.

37. Mr. K. Sreenivasan, learned Spl. Public Prosecutor has also drawn the attention of this court to Ex.P.15 recovery Mahazar proceedings. With reference to Ex.P.15 the court has already found that the contents of Ex.P.15 are highly unbelievable and improbable.

38. This court has carefully scrutinized meticulously the testimonies of prosecution witnesses. Pw1 Mr. Atulya Misra, who had granted order of sanction to launch prosecution against the appellant, in categorical words, has spoken to that:

"After perusal of the document LD13, Subject to this case, I can say if the complainant paid Rs.23,210/- he is entitled for the temporary connection. During my consideration for

sanction I considered that in the normal course of event nobody will pay bribe of Rs.25,000/-when he is legally entitled for the power supply by paying a lesser amount."

39. This court has also perused the judgment of the trial court along with the relevant material and finds that the learned special judge has not approached and appreciated the evidences of the prosecution witnesses with proper perspective. The judgment of the trial court seems to be erroneous and non application of mind and hence it requires the interference of this court.

In the Result

The appeal filed by the appellant/accused is allowed and the order of conviction and sentence recorded against the appellant/accused are set aside and he is acquitted of the charges under Sections 7, 13(2) r/w 13 (1) (d) of PC Act, 1988. The bail bonds, executed by and on behalf of the appellant are cancelled the suit is who stood on his behalf stands discharged and the fine amount paid, if any, by the appellant is ordered to be refunded.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge,
(CBI Cases XIII Addl.Sessions Judge),
Chennai

2.The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai

3.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

Copy to:The Section Officer, Crl.Section,
High Court, Madras -2 copies

+2cc to Mr.V.Parthiban, Advocate Sr.No.37478 & 37476

PA(CO)

sm:22.1.2018

Criminal Appeal No. 18 of 2016

Against

CC No. 45 of 2013