

Bail Slip

The Appellant/Accused was released on Bail vide order dt.4/11/08 in MP.No.1/2008 in CrI.A.No.767/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.10.2017

PRONOUNCED ON :30.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.767 of 2008

A.Antony Francis .. Appellant/SOLE Accused
Versus

State rep.by
The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

(Cr.No.22/2003/AC/CP) .. Respondent/Complainant

Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment in Special Case No.6/2004, dated 30.10.2008 on the file of the Special Judge & Chief Judicial Magistrate, Coimbatore.

For Appellant .. Mr.S.Ashokkumar, Sr. Counsel for
Mr.K.S.Karthik Raja.

For Respondent .. Mr.C.Iyyapparaj,
Addl. Public Prosecutor

JUDGMENT

This appeal is preferred by the sole accused, aggrieved by the judgment of conviction and sentence imposed on him for the offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, by the trial court in Special C.C.No.6 of 2004 on the file of the Chief Judicial Magistrate-cum-Special Judge, Coimbatore.

2. The brief facts of the case is: The respondent police received a complaint on 03.09.2003, from one Duraisamy S/o Chinnappa Gounder, alleging that Antony Francis, Village Administrative Officer, Keeranatham Village, Coimbatore North Taluk (Appellant) demanded bribe of Rs.1,000/- for taking action to issue separate patta in his name and in the name of his brother in respect of a property inherited by them through their father. Since the complainant not inclined to give bribe, he report to the Vigilance and Anti-Corruption Police. Accordingly, a case has been registered on 3.9.2003 at 10.30 hours. During the course of investigation trap was organized on the same day.

Currency was smeared with phenolphthalein, entrusted to the defacto complainant Duraisamy and was asked to give the money to the accused if he demands. The defacto complainant was accompanied by the shadow witness. Both the defacto complainant and the shadow witness Ramasamy went to the Keeranatham Village Administrative Officer's Office where the appellant was present. He received the tainted money from Duraisamy and after counting it kept it in his left side table drawer. Thereafter on receiving the pre arranged signal the trap team went into the office of the Village Administrative Officer and confronted the accused regarding the acceptance of bribe. After conducting phenolphthalein test in both the hands of the accused and collecting sample solutions of both hands, they recovered the tainted money from the left side table drawer of the accused.

3. After getting the chemical analyst report and after obtaining the sanction to prosecute the accused, from the Revenue Divisional Officer who is the person competent to remove the Village Administrative Officer, final report has been laid.

4. The trial court has taken cognizance of the final report and has framed charges under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

5. To prove the charges against the accused, the prosecution has examined 9 witnesses and marked 20 Exhibits and 5 Material Objects.

6. In defence the accused has examined 4 witnesses and marked a photo copy of the partition deed pertaining to the defacto complainant's family as Court Exhibit-1.

7. The trial court after appreciating the evidence let in by the parties, has concluded that the prosecution has proved the guilty of the accused beyond reasonable doubt and has sentenced the accused to undergo 4 years RI and fine of Rs.10,000/- and in default to undergo one year RI for each of the offences and has ordered the period of sentence shall run concurrently after giving set off for the period already undergone.

8. The said judgment is impugned on the ground that the prosecution has failed to prove that the appellant as Village Administrative Officer is competent to issue patta. When he is not empowered to issue patta, demanding money for issuing patta itself gets belied. When he is not capable of issuing any favour or render any service in connection with his official duty he cannot be held for demand of bribe to make pecuniary advantage by abusing his official position. Further P.W.4 in his evidence has categorically explained the process of issuing separate patta on receipt of application. In the said process the role of Village Administrative Officer would arise only after the application is received by the Tahsildar and forwarded

to the Survey Department and after receipt of the application by the Survey Department the same will be sent to Village Administrative Officer for his recommendation. It is admitted by P.W.4 as well as the official witnesses examined on behalf of the defence that the alleged application of the defacto complainant dated 18.8.2003 had never been forwarded to the Village Administrative Officer for his recommendation. While so, the necessity to demand or acceptance of bribe does not arise at all, such allegation is made with the motive to fix the appellant because on 14.8.2003 he declined the request of the defacto complainant when he was pressurised to issue separate patta immediately. The contradiction between the deposition of P.W.2 and P.W.3 regarding the sequence of events preceding to the alleged acceptance of bribe makes the case of the prosecution unbelievable. The trial court has totally ignored the said vital contradictions.

9. Admittedly, on 3.9.2003 the accused/appellant never demanded any money from P.W.2. P.W.2 himself had voluntarily informed the accused/appellant and gave the tainted money. Whereas the case of the defence is that the money was planted in the drawer of the appellant when he was not in his seat. Later, when the appellant came to his seat, the defacto complainant held the hands of the accused, pleaded him to process his application as soon as he receives from the Tahsildar office. Thus, his hands while contacting with the hands of defacto complainant had got the trace of phenolphthalein. As far as the money planted in his drawer is concerned it was neither demanded nor accepted by him. This theory of defence explanation and the motive for giving false complaint against the appellant was explained to the trap laying officer immediately after the trap. However, the trap laying officer has not properly recorded the explanation given by the accused/appellant which is mandatory as per the provisions of Vigilance Manual. Unfortunately, though P.W.8 admits in his deposition about a portion of the explanation given by the appellant/accused even to that extent, the trial court has not considered.

10. According to P.W.2 on 14.8.2003 he met the appellant and requested issuance of separate patta in his name and on that day itself the appellant had demanded illegal gratification of Rs.1,000/-. However, the complaint is lodged only on 3.9.2003 after delay of 18 days, which itself prove the defacto complainant has created records to fix the appellant for the alleged demand and acceptance of gratification.

11. The learned Additional Public Prosecutor appearing for the State has submitted that the demand of illegal gratification is well found from the complaint marked as Ex.P2. The complainant who is a retired Headmaster had inherited ancestral property along with his brother at Varathayyapalayam village. Though he and his brother are entitled half share each in the

land comprising Survey Nos. 57/1A, 57/1C, 60/1 and 59/1D, only joint patta was given to them which has disabled the defacto complainant to get drought relief given by the Government during the year 2003, though his brother was given the relief. Therefore, he met the accused/appellant who was the Village Administrative Officer for the concerned area and requested to issue separate patta. On 14.8.2003 at about 10.00 am when he met the accused/appellant, the accused/appellant told him he should apply to Tahsildar and also demanded Rs.1,000/-. So on 18.8.2003, he went to Tahsildar office and gave application for separate patta and informed about his application to the Village Administrative Officer-accused/appellant on 3.9.2003 at 10.00 am. At that time the accused/appellant reiterated his demand of bribe Rs.1,000/- and told him to bring the money on the same day and only then he will issue patta and without money he will not issue patta. Thus the demand of bribe of Rs.1,000/- on 14.8.2003 at 10.00 am and on 3.9.2003 at 10.00 am has been spoken by the P.W.2-complainant in his evidence as well as reflected in the complaint Ex.P2. On 3.9.2003 when the defacto complainant-(P.W.2) went to the Village Administrative Officer's office along with P.W.3-Ramasamy the accused/appellant asked him what is the matter, at that time P.W.2 told the accused that as demanded by him, he has brought money for issuance of patta and tendered the tainted money to the accused. The accused received it in his right hand counted it and thereafter kept it in the left side drawer of his table. These facts are elucidated through P.W.2 and corroborated by P.W.3. Thus the prosecution has duly proved the demand and acceptance of the bribe. Whereas the accused has come out without any plausible explanation for the receipt of the tainted money or recovery of the same from his possession. Hence the presumption under Section 20 of the PC Act cast upon the accused the burden to rebut, which has not been rebutted satisfactorily before the trial court. Hence the conviction is unassailable.

12. The point arises for consideration in this appeal is:
Whether the prosecution witnesses have satisfactorily deposed to hold the accused/appellant guilty of the offence?

13. As could be understood from the prosecution witnesses, the patta for the properties inherited by the defacto complainant along with his brother through his father stood in the joint name and hence he sought for separate patta. For the said purpose on 14.8.2003 the defacto complainant (P.W.2) met the accused/appellant at his office. On that day the first demand of bribe has been made by the accused/appellant. As per the instructions of the accused/appellant P.W.2 gave a requisition letter to the Tahsildar Coimbatore North, on 18.8.2003 for issuance of separate patta. Thereafter, on 3.9.2003 the defacto complainant went to the Village Administrative Officer's office and met the accused/appellant at

10.00 am enquired about his 18.8.2003 application. At that time for the second time the accused/appellant has demanded bribe. Not inclined to give bribe, P.W.2 lodged the complaint marked as Ex.P2 to DV&AC. As per the trap arrangement he went to the Village Administrative Officer's office on the same day at about 4.15 pm with money smeared with phenolphthalein and also accompanied by P.W.3, followed by trap team.

14. The complaint does not say anything about the earlier application and the proceedings of the Village Administrative Officer dated 14.8.2003. However, during the cross-examination P.W.2 admits that on 17.7.2003, he made a representation that there are certain omissions in the patta issued to him and his brother in respect of Survey Nos. 57/1A, 57/1C, 60/1 and 59/1D and were not properly assigned as per the partition deed. So fresh patta has to be issued to him and his brother as per the partition deed. The partition deed is marked as Court Document No.1. On 14.8.2003 the accused/appellant has processed the application dated 17.7.2003 and has recommended that joint patta should be issued in the name of the defacto complainant and his brother Subbiahan in respect of Survey Nos. 57/1, 59/1, 60/1 and 59/1D. P.W.2 admits that he came to know that the accused/appellant has recommended for issuance of joint patta in his name and his brother when he met the accused on 14.8.2003. The proceedings prepared by the accused is marked as Ex.P14 and P16. It recommends issuance of joint patta to P.W.2 and his brother for all four Survey Numbers mentioned above.

15. While so, P.W.2 claims that he gave an application on 18.8.2003 to the Tahsildar for issuance of separate patta in his name. While the proceedings of the appellant/accused recommending joint patta to the defacto complainant and his brother is marked as Ex.P14 and 16 dated 14.8.2003 and available on record, the alleged application dated 18.8.2003 given by P.W.2 for separate patta has not seen the light of the day. The very complaint Ex.P2 does not speak about his earlier application for carrying out corrections in the joint patta or the recommendation of the accused/appellant to issue correct patta jointly in the name of P.W.2 and his brother. Suppressing this fact and incident which has taken place during consideration of his request for the issuance of joint patta, the present complaint has been lodged as if on 18.8.2003 the defacto complainant made an application for separate patta to the Tahsildar as per the instructions of the accused. Thus suppression of fact becomes very relevant in the light of the defence taken by the accused/appellant. According to the appellant/accused which has been probablized through oral and documentary evidence, on 17.7.2003 an application was given by the defacto complainant mentioning that the patta issued in his name and his brother's name is not in consonance with the partition deed. Hence the same has to be rectified and fresh patta has to be issued. On receipt of this representation the

accused/appellant has recommended for issuance of joint patta in the name of the defacto complainant and his brother in respect of Survey Nos. 59/1D and 60/1 also.

16. This was not on par with the expectation of the defacto complainant. Hence he has thrown the recommendation letter at the accused and left the Village Administrative Officer's office. He has made a fresh application on 18.8.2003 to the Tahsildar. However, this application has not been recovered or marked by the prosecution. D.W.2 to D.W.4 as well as P.W.4 have categorically deposed that the application of the defacto complainant dated 18.8.2003 was not forwarded to the Village Administrative Officer-appellant/accused. While so in anticipation of the letter to be forwarded to him the Village Administrative Officer could not have demanded any money on 14.8.2003 or on 18.8.2003 or on 3.9.2003.

17. It is contended by the prosecution that P.W.2 and P.W.3 met the accused at his office and money was given to him informing that P.W.2 has brought money as demanded by the accused/appellant for issuance of patta. When the earlier demand on 14.8.2003 itself is doubtful, tendering money to the accused/appellant informing him that the money is what he demanded earlier also falls to the ground. Furthermore, the very crucial contradiction between the evidence of P.W.2 and P.W.3 is regarding whether the accused/appellant on 3.9.2003 was present in his seat, when P.W.2 went to see him at his office. While P.W.2 in the cross-examination admits that when he and P.W.3 went to Village Administrative Officer's Office, the accused/appellant was not in his seat but he was standing away from his room. When he saw P.W.2 and P.W.3 he asked them to go inside his room and wait for him. According to P.W.2, he and P.W.3 went to the room of Village Administrative Officer and waited for him. Contrarily P.W.3 has deposed that when he and P.W.2 went to VAO's office the accused/appellant was in his seat. P.W.2 alone entered into VAO's room, he did not enter into the VAO's room but standing near the door. This contradiction renders the prosecution case unbelievable and probablise the explanation of the accused that tainted money was planted in his table drawer when he was away from his seat.

18. The defence theory that when the accused/appellant was not in his seat, P.W.2 entered into his room and had planted the tainted money in his drawer and thereafter when the accused/appellant entered into his room, the defacto complainant held his hands and requested to process his application gets probablized, when the alleged application dated 18.8.2003 has not been recovered and placed on record by the prosecution.

19. Hence, it is established by the appellant that P.W.2 who was infuriated by the action of the appellant/accused for issuing joint patta instead of separate patta, has invented the

theory, enacted a play as if the accused has demanded money to issue patta based on his application dated 18.8.2003.

20. The trial court ought to have assessed the evidence let in by the defence and the contradictions of vital witnesses P.W.2 and P.W.3. Since the trial court has failed to appreciate the evidence before it in proper perspective, it requires interference.

21. Accordingly, the judgment of the trial court is set aside and the appeal is allowed. The appellant/accused is acquitted from the charges levelled against him. The bail bond if any executed by the appellant shall stand discharged. Fine amount if any paid by the appellant/accused shall be refunded to the appellant/accused.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gr.

Copy to:-

- 1.The Special Judge and Chief Judicial Magistrate, Coimbatore.
 - 2.The Principal District and Session Judge, Coimbatore
 - 3.The Inspector of Police,
Vigilance & Anticorruption, Coimbatore.
 - 4.The Superintendent,
Central Prison, Coimbatore.
 - 5.The Superintendent of Police, Coimbatore.
 - 6.The District Collector,Coimbatore.
 - 7.The Director General of Police, Mylapore.
 8. The Section Officer,
Criminal Section, High Court, Chennai 104.
 - 9.The Public Prosecutor, High Court, Madras.
- +1cc to Mr.K.S.Karthick Raja, Advocate SR.No.76540

PRE-DELIVERY JUDGMENT IN
CRL.A.NO.767 of 2008

PVS (CO)
SM:22.11.2017