

Crl A.766/2016

The Appellant/Accused No.1 namely G.Mathivanan was directed to be released on bail as per the order of this court dated 14.11.2016 made in Crl MP.12071/2016 in Criminal Appeal.766/16 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.09.2017

Pronounced on :10.10.2017

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.A.No.766 of 2016

G.Mathivanan .. Appellant/1st Accused

/versus/

State of Tamil Nadu rep.by its
Inspector of Police,
Vigilance and Anti-Corruption,
Chennai City-I Detachment
Chennai-28,
Crime No.3/06/LB/CC-1

.. Respondent

Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to call for the records of the learned Special Judge/Chief Judicial Magistrate, Thiruvallur, in her judgment dated 24.10.2016 in Spl.Case No.5 of 2008, set aside the conviction and sentence imposed upon the petitioner and allow the appeal.

For Appellant :Mr.S.Ilamvaludhi

For Respondent :Mr.R.Ravichandran, GA(Crl.Side)

J U D G E M E N T

This appeal is in challenge of conviction and sentence passed by the learned Special Judge-cum-Chief Judicial Magistrate, Tiruvallur in Spl.C.C.No.5 of 2008 dated 24.10.2016 against the appellant for the offences under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution case stems from a complaint dated 22.06.2006 laid by one John Bosco Arulappan, owner of Small Scale Industry Building situated at No.17, Jeevarathinam Main Road, K.R.S.Nagar, Ambattur, within the territorial jurisdiction of Ambattur Municipality alleging that by end of December 2004, he completed the construction of building in the above said address and applied for assessment of tax on 22.03.2005, 29.09.2005, 27.02.2006 and 29.03.2006. When Mr.G.Mathivanan [A1], Bill Collector of Ambattur Municipality came to his building on 14.06.2006 and enquired him, whether he has paid the tax for the building, he informed Mr.G.Mathivanan[A1] about the pendency of his earlier applications. Mr.G.Mathivanan[A1] again came on 21.06.2006 at 5.30 p.m., and told him that his building is in 920 sq.ft. If the building is legally assessed, he has to pay Rs.8,280/- per half year. If the tax has to be assessed at the rate of Rs.1,500/- per half year, he has to pay bribe of Rs.10,000/-. Since the complainant[P.W.2] did not agree, Mr.G.Mathivanan [A1] has reduced the bribe amount to Rs.8,000/- to be paid in lump-sum.

3. After registration of First Information Report based on the above complaint, the prosecution has laid trap and caught Mr.G.Mathivanan[A1] and his accomplice Mr.Poovendan [A2], immediately after Mr.G.Mathivanan[A1] received Rs.10,000/- from the defacto complainant John Bosco Arulappan and passed it on to Mr.Poovendan [A2], in the presence of Mr.P.Devaraj[P.W.3]. The hand finger wash of Mr.G.Mathivanan [A1] and Mr.Poovendan[A2] and the shirt pocket wash of Mr.Poovendan[A2], on chemical analysis, were found positive to phenolphthalein test. The first accused Mr.G.Mathivanan[A1] being a public servant, after obtaining sanction for prosecution from the competent authority, was put to trial along with the second accused.

4. The trial Court, on perusal of the final report and records relied on by the prosecution framed charges under Section 7 of the Prevention of Corruption Act 1988 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against Mr.G.Mathivanan (A-1) and under Section 109 IPC r/w Section 7 of the Prevention Corruption Act, 1988 and 109 of IPC r/w Section 13(1)(d) r/w 13(2) of the Prevention of corruption Act, 1988 against Mr.Poovendan(A-2).

5. To prove the charges, the prosecution has examined 11 witnesses, marked 13 exhibits and 7 material objects. On behalf of the defence, one witness and two documents were marked. On appreciation of the above evidence, the trial Court has held the first accused guilty of the charges holding the prosecution has proved the guilt of the accused beyond doubt and acquitted A-2.

6. The grounds of attack on the trial Court judgment are firstly, the prosecution has failed to prove demand of illegal gratification by the appellant, which is sine qua non for holding a person guilty of offence under Section 7 of the Prevention of Corruption Act, 1988. Secondly, the money received by the appellant was towards the payment of tax and not as bribe, this has been proved through the defence witness and defence exhibits. The trap laying officer failed to follow the Vigilance and Anti-Corruption Manual, which mandates recording the statement of the accused immediately after the completion of trap proceedings and recovery of tainted money. The plausible explanation given by the accused is not at all considered by the trial Court. Thirdly, the credibility of the defacto complainant being doubtful and his habit of lodging false complaints against the officials, who do not yield to his unreasonable request, is proved, this has not at all been considered by the trial Court. Lastly, the complaint itself alleges only Rs.8,000/- was demanded on 21.06.2006. Whereas the case of the prosecution is that on 22.06.2006, the first accused demanded Rs.2,000/- more and totally, received Rs.10,000/-. No explanation is given by the prosecution for the extra payment of Rs.2,000/-. In this regard, the defence has proved through Ex.D-1 working sheet and D-2 demand notice that the half yearly tax assessed for the defacto complainant in the building was Rs.4,768/- and as bill collector, he is authorised to collect property tax, what the appellant has collected from the defacto complainant is the annual tax, which comes around Rs.9,600/-. Though the innocence of the appellant is well proved, the trial Court misdirected by erroneous appreciation of evidence held the appellant guilty. In support of the submission, the learned counsel appearing for the appellant has referred the judgments where the trial Court has acquitted the accused charged for the offences under the Prevention of Corruption Act, 1988.

7. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the prosecution has proved to the core the demand of illegal gratification, its acceptance and recovery from A-2. From the evidence, it could be well found that the defacto complainant's application for assessment of tax was not processed for long time. The accused inspected the building only on 14.06.2006 and again visited on 21.06.2006, when he informed the defacto complainant that he should give bribe of Rs.10,000/- and later, reduced to Rs.8,000/- to assess lessser tax. On 22.06.2002, the first accused went to the defacto complainant premises along with second accused. The defacto complainant gave Rs.8,000/- tainted money on demand by the first accused. The first accused demanded a further sum of Rs.2,000/- stating that he has to distribute the bribe money to several persons including his superiors and received additional Rs.2,000/-, totalling Rs.10,000/-. On the date of receiving the illegal gratification, the application of the defacto complainant dated 29.03.2006 was not even taken up for scrutiny. In fact,

the receipt of the application was not even recorded in the register meant for it. The defence documents Exs.D-1 and D-2 are subsequent to the trap proceedings. Therefore, the defence explanation for receipt of the money towards tax is false. The defence documents in fact enhances the credibility of the prosecution case that though the defacto complainant application for assessment of tax was received by the Municipality Office on 29.03.2006, the tax was not assessed. The accused expecting bribe did not record it in the register, so that he can manipulate details and assess lesser tax, if he is rewarded.

8. The examination of the complaint Ex.P-2 reveals that the application for assessment of tax was pending consideration at the Ambattur Municipality as on the date of complaint (i.e.) 22.06.2006. The application is marked as Ex.P-5. The seal found on the Court Fee Stamp indicates that the application was received at the office of the Ambattur Municipality on 29.03. 2006. The case of the prosecution is that, the accused inspite of receiving the application has not entered the receipt of the application in the register meant for it. As per the deposition of Mr.Murugesan, Manager Ambattur Municipality examined as P.W.8, the application Form [Ex.P-5] of the defacto complainant (PW-2) was recovered from the seat of the accused. The accused own witness Mr.Ravi examined as DW-1 admits in his cross examination that there is nothing on record to show that the accused, on receipt of the application, prepared the working sheet, inspected the premises and assess tax and place the file to the Superior Officer for orders. Only after obtaining the order, demand notice will be sent and tax will be collected. Before assessment, Bill Collector cannot collect tax. The accused has received money from the defacto complainant without tax assessment. The working sheet Ex.D-1 was not prepared by the accused. It was prepared by DW-1 and demand notice was prepared thereafter.

9. It is admitted by PW-2 that he has given complaints against an Engineer working in the Electricity Board and against a Surveyor of Revenue Department and the same are pending trial. Does it debar the defacto complainant to lodge the complaint against the appellant?. Is it a bad conduct to draw any adverse inference against the defacto complainant?. The credit of a witness may be impeached as stated in Section 155 of the Indian Evidence Act, 1872 and not otherwise. Therefore, the attempt to impeach the credibility of the defacto complainant on this score does not carry any merit.

10. Likewise the submission with regard to proof of demand and acceptance as sine qua non for prosecution under Section 7 of the Prevention Corruption Act, 1988 should be viewed from the facts pleaded and denied. When the accused himself admits to the question under Section 313 of the Code of Criminal Procedure that he accepted the money from PW-2 as

tax, the proof of demand and acceptance gets relegated to back ground and the probative value of his explanation gains significance to decide, whether he is guilty or not.

11. The appellant admits that on 22.06.2006 at about 3.00 p.m., he went to the premises of P.W.2[Mr.John Bosco Arulappan]. He received Rs.10,000/- from PW-2[Mr.John Bosco Arulappan] and gave to his Assistant A-2. He received the money towards tax for PW-2's property. He was not given an opportunity to explain. The Vigilance and Anti-Corruption Manual mandates the trap laying officer to get the statement of the accused person immediately, after recovery of tainted money. Admittedly, the trap laying officer PW-10 [Mr.Amalraj] has failed to record the statement of the accused. Therefore, prejudice has caused to the accused, which entitles him for acquittal.

12. The manual of Vigilance and Anti-Corruption or Central Bureau of Investigation is procedural guideline for its Investigating Officers to ensure fair and free investigation. It being a subordinate legislation, they are not Superior to Code of Criminal Procedure passed by the Parliament. Any deviation or lapse in following the guidelines in the manual at the most render the prosecution case doubtful but not vitiate. The core test should be, whether such lapse has caused any prejudice to the accused. The facts of the case in hand, the accused has been given an opportunity to explain about why he obtained the money and he has stated that his superior Mr.Murugesan (RO) has told him, only if he get money from the property owners, he will assess tax or else, he will assess the tax, so he received money from PW-2[Mr.John Bosco Arulappan]. This explanation forms part of the seizure mahazar marked as Ex.P-4. This document is a contemporaneous document prepared immediately, after seizure and signed by the accused along with witnesses and the trap laying officer. Hence, at distant point of time, contrary to the facts, the accused cannot plead that he was not given an opportunity to explain about the possession of tainted money.

13. Further more, even at the later point of time, when he was given an opportunity under Section 313(1) of the Criminal Procedure Code to explain about the incriminating evidence against him, he has answered that he received the money only towards tax and not as reward to do his official function. But, this explanation fails to stand the scrutiny of law, because on 22.06.2006 the date of receipt of money the assessment was not completed. The defence's own document Ex.D-1 the working sheet and Special notice for assessment of property tax go to show that it was prepared only on 14.08.2006. The Revenue Assistant, Revenue Inspector and the Commissioner all have initialled the working sheet only on 14.08.2006. Further, the document relied by the accused and marked through his own witness indicates that the above assessment was made based on the application of the defacto

complainant given on 07.07.2006 which is subsequent to the trap proceedings.

14. DW-1 had clearly conceded in his cross examination that no Bill Collector should collect the tax before assessment. Therefore, through these evidence, it is crystal clear that on the day, when the appellant received Rs.10,000/- from the defacto complainant, the Municipality had not assessed the tax for the property, the application received by the Municipality on 29.03.2006 was lying with the accused/appellant, without any sign of progress, till it was recovered on 22.06.2006 immediately after the trap.

15. Though several judgments were cited on either side, this Court is of the opinion, it is suffice to refer cite three of them in which, most of the earlier judgments are extracted and it covers the legal issue to decide the present case in hand.

(i) in the judgment of the Hon'ble Supreme Court in P.Sathyannarayana Murthy -vs- Distirct Inspector of Police reported in [AIR 2015 SC 3549] , wherein it is held in paras 18 to 22, which reads as under:

"18. This Court in A.Subair v. State of Kerala (2009) 6 SCC 587:(2009 AIR SCW 3994), while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

19. In State of Kerala and another v. C.P.Rao (2011) 6 SCC 450: (AIR 2012 SC (Supp) 393), this Court, reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B.Jayaraj (AIR 2014 SC (Supp) 1837) (supra) in unequivocal terms, that mere

possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d) (i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d) (i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

(ii) in the judgment of the Hon'ble Supreme Court of India State of Andhra Pradesh v. P.Venkateswarlu reported in 2015 (3) MLJ (Cr1) 225 (SC), wherein paras 10 and 11 are extracted hereunder:

"10. we are aware of the position in law, as laid down in cases involving the relevant provisions under the Prevention of Corruption Act, that mere recovery of the tainted amount is

not a sine qua non for holding a person guilty under Sections 7, 11 and 13 of the Act. This Court has observed in *Narendra Champaklal Trivedi v. State of Gujarat*, AIR 2012 SC 2263 : (2012) 7 SCC 80 : LNIND 2012 SC 1030 : (2012) 3 MLJ (Cr1) 809, that there has to be evidence adduced by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a sine qua non for constituting an offence under the Prevention of Corruption Act. The prosecution is duty bound to establish that there was illegal offer of bribe and acceptance thereof and it has to be founded on facts. The same point of law has been reiterated by this Court in *State of Punjab v. Madan Mohan Lal Verma*, AIR 2013 SC 3368 : (2013) 14 SCC 153 : LNIND 2013 SC 719 : (2013) 3 MLJ Cr1 565. In the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act.

11. In *C.M. Girish Babu v. CBI, Cochin*, High Court of Kerala, AIR 2009 SC 222 : (2009) 3 SCC 779 : LNIND 2009 SC 435 : (2009) 3 MLJ (Cr1) 341, this Court stated:

"It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has and then it can be held by the court that the prosecution has proved the accused received the amount towards gratification."

(iii) in the judgment of the Hon'ble Supreme Court in Somabhai Gopalbhai Patel -vs- State of Gujarat, reported in 2015 CrI.L.J 255. In this case, similar to the case under appeal, the accused took a plea that he received the money towards tax and not for providing village map, irrigation certificate, etc. to get electricity connection as alleged in the complaint. As in this case, the judgements cited by the appellant counsel herein were cited before the Hon'ble Supreme Court, the Hon'ble Apex court has held that,

4."Reliance was placed on the following decisions of this Court: (1) A.Subair v. State of Kerala (2009) 6 SCC 587: (2009 AIR SCW 3994); (2) State of Kerala and another v. C.P.Rao (2011) 6 SCC 450:(AIR 2012 SC (Cri) 911:2012 AIR SCW 2879); (3) Banarsi Dass v. State of Haryana (2010) 4 SCC 450: (AIR 2010 SC 1589: 2010 AIR SCW 2282); and (4) B.Jayaraj v. State of A.P., 2014 (4) SCALE 81: (AIR 2014 SC (Cri)1041:2014 AIR SCW 2080).

6. The primary requisite of an offence under Section 13(1)(d) of the Act is proof of demand or request of a valuable thing or pecuniary advantage from the public servant. In the first two decisions relied on by the learned counsel for the appellant cited supra, on facts, the complainant in the case was not examined and this Court held that there is no substantive evidence to prove the factum of demand. The complainant in the present case has been examined and hence those decisions would not be of any help to the appellant herein. In the remaining two decisions relied on by the learned counsel for the appellant referred to supra, on facts, the complainant did not support the prosecution case insofar as demand made by the accused its concerned and disowned his complaint and declared hostile by the prosecution and in such circumstances, this Court held that in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

16. In the present case also, the complainant has mounted the witness box and has deposed about the demand made by the accused. His version is corroborated through the evidence of PW-3. The recovery of application marked as Ex.P-5 proves the pendency of tax assessment application at the accused table. The recovery of tainted currency noted in the pre-trap mahazar from A-2 and the admission of the receipt of the money coupled with the failure to substantiate that on the date of receiving the money, the building was assessed and tax was due from the defacto complainant, clearly establishes the fact that the accused has received the money only as bribe and for no other reason.

17. Therefore, this Court holds that the trial Court has rightly held the accused guilty. The trial Court judgment warrants no interference. Hence, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant by the learned Special Judge/Cheif Judicial Magistrate, Thiruvallur, in Spl.Case No.5 of 2008, dated 24.10.2016 are confirmed. The substantive sentence shall run concurrently. No change in the fine imposed by the trial Court. Period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The bail bond stands cancelled. The appellant is hereby directed to surrender within 2 months from the date of this judgment to under the sentence. In case he fails to surrender within 2 months, the respondent shall secure him and remand to prison for the remaining period of sentence.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. Inspector of Police,
Vigilance and Anti-Corruption,
Chennai City-I Detachment, Chennai-28,

2. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.S.Ilamvaludhi, Advocate sr.no.72518

Pre-delivery judgment made in
Crl.A.No.766 of 2008

RR 14/11/2017