

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :14.11.2017

PRONOUNCED ON: 04.12.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.771 of 2016
and
Crl.M.P.No.12189 of 2016

Dr.R.Radhakrisnan

.. Appellant/Accused

Versus

State represented by
Inspector of Police
Vigilance and Anti-Corruption
Coimbatore.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the order of conviction passed in Spl.C.C.No.10 of 2012, dated 5.11.2016, on the file of the Chief Judicial Magistrate, Special Judge (FAC) Special Court for Cases under Prevention of Corruption Act, Coimbatore.

For Appellant .. Mr.A.Ramesh Sr.Counsel for
Mr.V.Viswanathan.

For Respondent .. Mr.P.Govindarajan,
Addl. Public Prosecutor (Crl.side)

JUDGMENT

This appeal is directed against the judgment of conviction and

sentence imposed against the appellant to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.10,000/- in default to undergo Simple Imprisonment for a period of three months for the offence under Section 7 of Prevention of Corruption Act, 1988 and also the conviction and sentence to undergo Rigorous Imprisonment for a period of five years and to pay fine of Rs.1.00 lakh in default to undergo Simple Imprisonment for a period of one year for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The trial court ordered the period of sentence shall run concurrently.

2.The case of the prosecution is that the appellant while working as Vice-Chancellor of Anna University, Coimbatore, invited tender for the supply of 750 number of dual desks. While offering the contract, he bargained with one Senthilkumar (PW1) to pay 10% of the contract amount as bribe, so as to confirm the contract in his favour. When the price bids were opened yet another participant Mr.A.K.Mohammed Iqbal (PW6) was the successful bidder quoting the lowest price for supply of 750 numbers of dual desks. So the accused negotiated with Mohammed Iqbal(PW6) and Senthilkumar (PW1) and obtained consent of Mohammed Iqbal that he may not be able to supply 750 numbers of

dual desks but only 500 numbers of dual desks within the stipulated period of 15 days. After obtaining the consent A.K.Mohammed Iqbal (PW6) was awarded contract for supply of 500 numbers of dual desks and Senthilkumar(PW1) was awarded for supply of 250 dual desks. The bill raised by Senthilkumar(PW1) was withheld by the appellant till he paid the bribe amount of Rs.40,000/-. On 11.9.2008 the appellant received Rs.40,000/- from Senthilkumar(PW1) in the presence of one V.M.Gopal (PW2) and thereafter handed over the cheque for a sum of Rs.11,60,000/- towards supply of 250 numbers of dual desks. On 6.7.2009 one S.Sivapandi moved this Court by way of Writ Petition No.13279 of 2009 listing out several misconducts against the appellant, while discharging his official function as a Vice-Chancellor of Anna University, Coimbatore.

3.As a consequence the Inspector of Police, Vigilance and Anti-Corruption, Coimbatore, registered First Information Report on 6.8.2009. Pursuant to the investigation the demand and acceptance of illegal gratification by the appellant came to light and Senthilkumar (PW1) has given a statement how the appellant extorted bribe money from him. So based on the evidence collected during the course of investigation the prosecution filed a final report before the Special Court for Prevention of Corruption Act, Coimbatore.

4.The trial court after considering the material placed by the prosecution framed charge against the appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 for demand and acceptance of Rs.40,000/- from Senthilkumar (PW1) and thereby the appellant abused his official position as public servant and obtained pecuniary advantage for himself.

5.To prove the charges the prosecution has examined 17 witnesses, marked 32 documents. On behalf of the accused/appellant he has mounted the witness box and subjected himself for chief and cross-examination. 16 documents were marked on the side of the defence.

6.The trial court after appreciating the evidence let in by the prosecution and the defence held the appellant/accused guilty of both the charges and sentenced him as stated above.

7.The learned Senior Counsel for the appellant contended that the registration of First Information Report itself is misconceived. Neither the alleged bribe giver nor the aggrieved suppliers had expressed any grievance over the process of tender followed by the

appellant herein. Based on the writ petition filed by the disgruntled element the First Information Report was registered on 6.8.2007 alleging malpractice and corruption in accepting the tender of Mr.Senthilkumar (PW1) for supply of 250 numbers of dual desks during the month of August,2008. The trial court relying upon the evidence of P.W.1-Senthilkumar who is an accomplice, has held the appellant guilty of demand and acceptance of bribe of Rs.40,000/-. The evidence of accomplice is not trustworthy and his testimony is to be corroborated by trustworthy witness and not by another accomplice. In the present case the evidence of PW1 who is an accomplice as per the prosecution, his evidence is not corroborated by independent witness. P.W.6-Saravanan has deposed that he lend Rs.40,000/- to PW1-Senthilkumar and Gopal (PW2) say he saw the accused receiving the tainted money. They both are introduced as witness for the sake of supporting the prosecution.

8.The other contention raised by the learned Senior Counsel for the appellant is that the sanction to prosecute the appellant/accused is not issued by the authority who is competent to remove the appellant/accused. The accused was Vice-Chancellor of Anna University, Coimbatore and as per the Anna University, Coimbatore

Act, 2006, the Governor/Chancellor of the University is the appointing authority and he is the person competent to remove the appellant/accused. While so, the power vested with the Governor as Chancellor of the University cannot be delegated to the Secretary in the Government. In this case the sanction order marked as Ex.P30 through P.W.16-Dr.P.S.Sridhar is non-est in law. Therefore the very cognizance of the offence against the appellant/accused itself is illegal. Further the learned counsel for the appellant contended that when the Tamil Nadu Transparency in Tenders Rules, 2000 permits the tender calling authority for negotiations with the bidder and for splitting up the tender, the trial court without appreciating the discretionary power exercised by the appellant/accused to procure dual desks within a stipulated period of 15 days to avoid inconvenience to the students, had wrongly attributed criminal intention and on surmises and conjunctions held the appellant/accused guilty. Therefore, the learned Senior Counsel for the appellant raised the following three points for consideration.

- 1. P.W.1's (the one who gave bribe) evidence is nothing but an accomplice evidence which need to be considered with the support of an independent evidence and the same is absent in this case.*
- 2. PW2 to PW5 were also nothing but an accomplice to the crime. So their evidence cannot be relied up on without any*

corroboration from independent evidence.

3. *The sanction to prosecute was accorded by the Additional Secretary is patently illegal, as the authority to grant sanction is Governor of the State and no evidence is produced to show that the authority was delegated to the Additional Secretary.*

The learned Senior Counsel fervently argued that the appellant is an innocent and the trial court judgment is liable to be set aside.

9. Per contra the learned Additional Public Prosecutor submitted that the appellant herein was appointed as first Vice-Chancellor of Anna University, Coimbatore immediately after constitution of Anna University at Coimbatore under the new statute. As per the Anna University, Coimbatore Act, 2006, the first Vice-Chancellor is to be appointed by the Government and not by the Chancellor. This appellant who was till then working in the Chief Investigator, Center for providing Electronics and Information Technology Patent Visualization and Alert Services, Anna University, Chennai, was appointed by the State Government as the first Vice-Chancellor under the provisions of Section 54 of the Anna University, Coimbatore Act, 2006 for a period of three years. After registration of the FIR he was repatriated from the office of the Vice-Chancellor to the parent post as Professor of Mechanical Engineering, College of Engineering, Chennai and the appellant joined duty on 9.2.2010. The sanction order was

issued on 16.03.2012 by the Additional Chief Secretary to the Government who is the Secretary of Higher Education Department. On the date of taking cognizance, the appellant was under suspension. Therefore, the competent authority being the Government, the Secretary to the Higher Education Department in the rank of Additional Secretary had applied his mind and issued the sanction order. The order was passed by the Government which has been issued in the name of Governor of Tamil Nadu and P.W.16-Dr.T.Sridhar was examined by the prosecution wherein he has deposed about his application of mind as well as the competency to issue sanction order. Therefore, there is no error in the sanction order.

10. Under Section 19 of the Prevention of Corruption Act, the statute clearly states that the person who is competent to remove the public servant is the authority to issue sanction for prosecution of the said person. Further, even if any error or omission or irregularity in the sanction order it cannot be the ground to reverse or alter the finding of the trial court.

11. The plea regarding the evidence of accomplice-PW1 the learned Additional Public Prosecutor submitted that the evidence of

PW1 is admissible in evidence both under Evidence Act as well as the Prevention of Corruption Act which is a Special Act wherein under Section 24 any statement given by the bribe giver in a proceeding against a public servant for the offence under Section 7 or 11 or 13 or 15 of the Prevention of Corruption Act, shall not be subjected for prosecution under Section 12 of the Act. Thus the spirit of law clearly indicates that evidence of bribe giver is admissible which is credit worth and his statement can be used against a public servant who has received bribe from the said accomplice.

12.Regarding the factual aspect the learned Additional Public Prosecutor submitted that PW1-Senthilkumar who was running 'Surya Industries' at Erode, was dealing with manufacture of furniture. When he saw the advertisement of Anna University, Coimbatore in Dhinakaran Tamil Daily on 25.7.2008, inviting sealed tenders for supply of 750 numbers of dual desks, he approached the appellant herein for issuance of tender document. Even before issuance of tender document, the appellant has negotiated with PW1 and only after agreeing to pay 7.5% of the price quoted as bribe, he issued tender document to Senthilkumar. Later, on 2.8.2008 at about 11.30 a.m., while price bids were opened by the tender committee, one

A.K.Mohammed Iqbal (PW6) was found to be the successful bidder with lowest price and the price bid of Senthilkumar (PW1) was liable to be rejected since he has quoted two price bids one for 'post forming' and the other for 'Teak Wood model'.

13.Senthilkumar (PW1) has explained in his deposition that as the specification for the edges of the dual desk was mentioned as 'Post forming and Teak Wood' he entertained doubt about these two categories of dual desks and when he asked the appellant he has instructed him to quote two rates in the price bid one for 'Post forming' and another for 'Teak Wood'. Accordingly, he had quoted two rates. So in order to get over the objection raised by Mohammed Iqbal, the appellant had invited both Senthilkumar and Mohammed Iqbal to his room in the presence of Palanisami(PW10) the Registrar of Anna University, Coimbatore, and on 4.8.2008 he obtained a letter dated 2.8.2008(Ex.P15) from Mohammed Iqbal (PW6) that he can supply only 500 numbers of dual desks within the stipulated period of 15 days. On the strength of that letter the appellant split up the tender and awarded contract to Senthilkumar(PW1) for supply of 250 numbers of dual desks. After supply of dual desks when cheque for payment was made ready both Mohammed Iqbal (PW6) and

Senthilkumar (PW1) went to University on 6.8.2008 to collect their bill amount. While the cheque for payment of bill amount for A.K.Mohammed Iqbal (PW6) for supply of 500 dual desks was issued to him on that day, the cheque for payment of bill amount for Senthilkumar(PW1) for supply of 250 dual desks was not issued to him and he was instructed by the Registrar (PW-10) to meet the appellant.

14. When Senthilkumar(PW1) met the appellant he demanded Rs.1.00 lakh to issue the cheque for Rs.11,60,000/-. When Senthilkumar(PW1) protested for such huge demand saying he was not awarded the entire contract for supply of 750 numbers of dual desks, the appellant reduced the bribe amount to Rs.40,000/- and thereafter, Senthilkumar(PW1) has gone back to Erode. After arranging Rs.40,000/- from his friend Saravanan(PW4), went to Coimbatore on 11.9.2008 along with his friend V.M.Gopal((PW2) who had some personal work at Coimbatore. So they both met the appellant and paid Rs.40,000/- as illegal gratification to the appellant and collected the cheque from him. These facts have been clearly spoken by Senthilkumar(PW1) who gave bribe and who had been interacted with the appellant regarding supply of dual desks.

15. P.W.2-V.M.Gopal who had accompanied and saw the demand

and acceptance of Rs.40,000/- by the appellant. P.W.4-Saravanan who had arranged hand loan Rs.40,000/- for Senthilkumar(PW1) and gave to him. Mohammed Iqbal(PW6) who was the lowest bidder in the tender for supply of 750 numbers of dual desks has spoken about the negotiations took place on 4.8.2008 in the room of the appellant and the circumstances under which he gave Ex.P15 restricting his supply to 500 numbers of dual desks.

16. Therefore, the learned Additional Public Prosecutor appearing for the respondent submitted that there is no error or illegality in the sanction for prosecuting the appellant. FIR was registered based on the information collected by the Inspector of Police, Vigilance and Anti-Corruption, Coimbatore against this appellant and after sustained investigation on the basis of the statement of Senthilkumar(PW1) the misconduct of the appellant by abusing his official position to make pecuniary advantage has come to light and the other witnesses have corroborated the material facts put forth by the accomplice. Hence, there is no ground to interfere with the judgment of the trial court.

17. The point arises for consideration is:

Whether the judgment of the trial court is erroneous and requires any interference to wrong

appreciation of evidence both on facts and law?

18.Regarding the competency of suspending the appellant, pending investigation the appellant has approached this Court by way of writ petition raising the power of the Government to suspend him. In the said context the Division Bench of this Court has held as follows:-

"10.Indisputably, the appellant, while working as the Chief Investigator, Center for providing Electronics and Information Technology Patent Visualization and Alert Services, Anna University, Chennai, was appointed as the first Vice Chancellor under the provisions of Section 54 of the Act 2006 for a period of three years by the State Government. On the basis of the communication dated 27.7.2009 from the Director of Vigilance and Anti Corruption, the State Government accorded permission to register a case and initiate investigation for the serious allegation of corruption and also accumulation of disproportionate asset by G.O.(2D)No.82 dated 28.8.2009. Thereafter, vide impugned order dated 31.8.2009, the appellant was placed under suspension by the State Government. The State Government, being the appointing authority on the post of the first Vice Chancellor under the provisions of Section 54 of the Act 2006,

is competent to pass the order of suspension. Thus, the contention of the appellant that the State Government has no competence to place the Vice Chancellor under suspension is noted to be rejected. In normal course, the Vice Chancellor is appointed by the Chancellor. In that event, the university alone with approval of the Chancellor is competent to place the Vice Chancellor under suspension. But, in the case on hand, when the appointment of the appellant was by the State Government as the first Vice Chancellor, the State Government is fully competent to place the appellant under suspension."

19. From the records placed by the prosecution before the trial court and perusal of the evidence adduced by P.W.16-Mr.T.S.Shridhar, Additional Chief Secretary of Higher Education, the sanctioning authority it is very clear that on the date of taking cognizance the appellant was only a Professor of Anna University (under suspension). The Higher Education Secretary in the Government of Tamil Nadu of Additional Secretary rank, has perused the records and after application of mind he has accorded sanction to prosecute the appellant. He has also intimated the same to the Governor of Tamil Nadu and in his cross-examination he has deposed that under Article 166 of the Constitution which reads as under any Executive Order

passed by the Government shall be issued in the name of the Governor.

"166. Conduct of business of the Government of a State;

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor;

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor;

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

20. Illustration to Section 114(e) of the Evidence Act says that Court may presume existence of fact that judicial act, has been regularly performed. The Professor of the University run by the Government is appointed by the committee constituted by the

Syndicate and approved by the Syndicate. However, when it comes to removal the sanction of Government is required. The Higher Education Department is the Department Concerned which administers the Universities. Therefore, the sanction for prosecuting the appellant is perfectly valid and legal. The evidence of P.W.16 discloses his application of mind on perusal of documents. Therefore, this plea raised by the appellant is unsustainable. Even otherwise as pointed by the learned Additional Public Prosecutor Section 19(3)(a) of the Prevention of Corruption Act, 1988 which reads as under, render the submission made by the appellant a force less.

*"19(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby."*

21.Regarding the evidence of P.W.1 accomplice, no doubt the law as well as the prudence indicates that the evidence of accomplice though admissible in evidence it is unworthy of credit if not corroborated in material particulars. A combined reading of Section

133 and 114(b) of the Indian Evidence Act which is extracted below clearly gives an insight to the Court how the evidence of accomplice to be appreciated.

"133. Accomplice.-An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

"114(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars."

22. In the case in hand it is not the evidence of P.W.1-Senthilkumar, alone which has led to judgment of conviction but overall appreciation of the evidence by P.W.1-Senthilkumar, the person who has given bribe to the appellant, P.W.2-V.M.Gopal, the person who has accompanied P.W.1 and witnessed the demand and acceptance of bribe by the appellant/accused, P.W.4-Saravanan, who has arranged hand loan of Rs.40,000/- to P.W.1, P.W.6-A.K.Mohammed Iqbal, who is one of the successful bidder in the tender for supply of 750 numbers of dual desks and P.W.10-Palanisami, who had been administering the Anna University, Coimbatore, as Registrar and had been witnessed how this tender transaction has passed through on the instruction of the appellant. When these witnesses have

spoken against the appellant, the vague defence taken by the appellant that the entire case was registered against him with malice on the instigation of certain persons with vested interest and the Exhibits he has marked on his side to show that he had been representing to the Government about the misdeed of the then Governor of Tamil Nadu are all appears to be an after thought created by him subsequent to the registration of FIR against him. On re-appreciation of evidence, I find the trial court on considering the evidence let in by the prosecution has rightly found guilty of the appellant.

23. Therefore, this Court does not find any reasonable justification to interfere the finding of the trial Court including the period of sentence imposed on him. As pointed out by the trial Court an educated person holding high coveted position had failed to be a role model to youth. Any concession in period of sentence will give a wrong signal. Hence this Court is not inclined to modify the sentence.

24. In the result, the appeal is dismissed. Consequently, Crl.M.P.No.12189 of 2016 is closed.

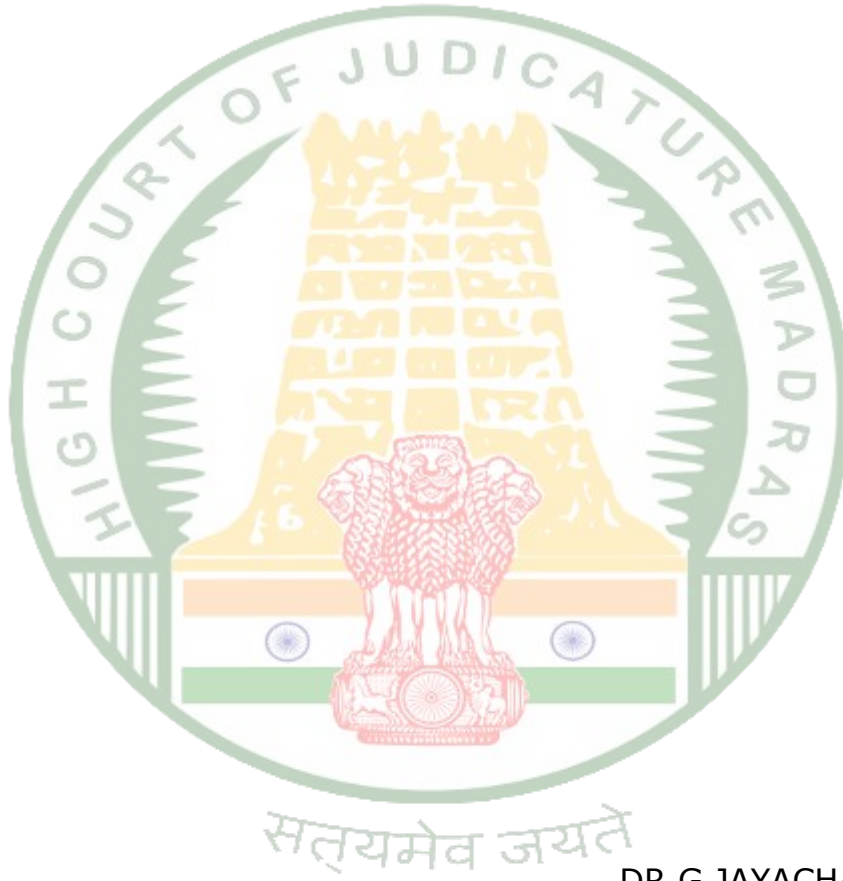
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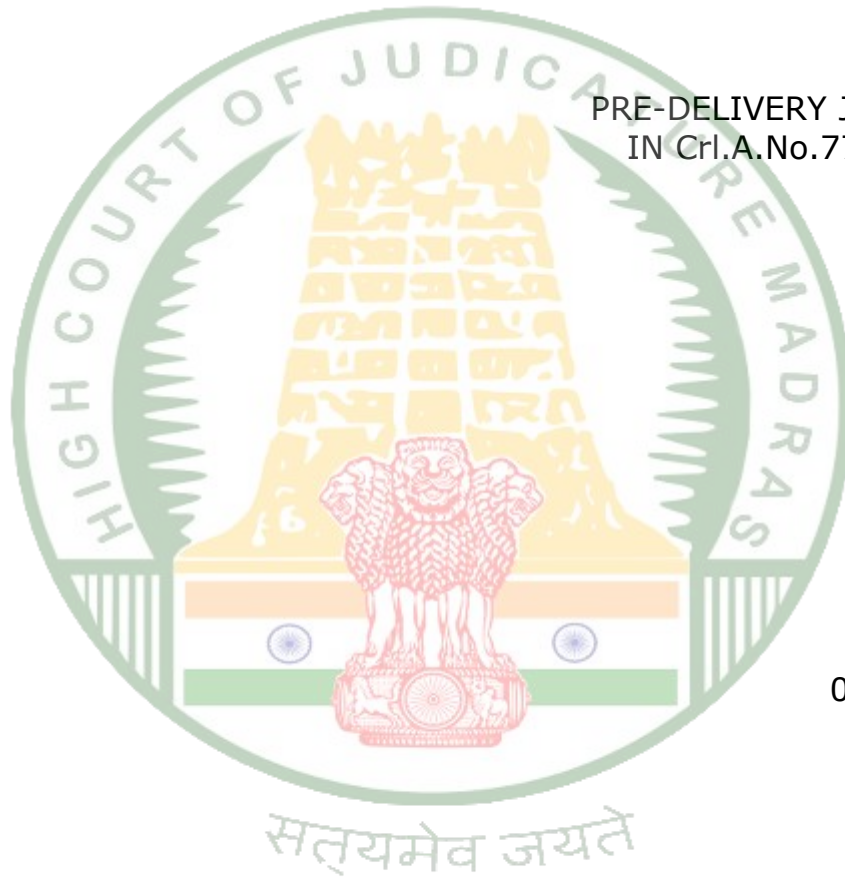
- 1.The Inspector of Police, Vigilance and Anti-Corruption, Coimbatore.
- 2.Chief Judicial Magistrate, Special Judge (FAC) Special Court for Cases under Prevention of Corruption Act, Coimbatore.



DR.G.JAYACHANDRAN, J

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PRE-DELIVERY JUDGMENT
IN CrI.A.No.771 of 2016

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