

Bail Slip

The Appellant herein/Accused viz M. Sankara Narayanan, S/o Muthusamy Asari, was directed to be released on bail as per order of this court dated 15.12.2008 made in M.P. No 1/08 in CrI.A. No 819/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2017

Pronounced on : 10.10.2017

Coram

The Honourable Dr. Justice G. Jayachandran

Criminal Appeal No. 819 of 2008

M. Sankaranarayanan

.. Appellant/Accused

/versus/

The State rep. by

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Coimbatore.

.. Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code r/w Section 27 of the Prevention of Corruption Act, 1988 praying to set aside the judgment and sentence dated 12.11.2008 passed in Special C.C.No.3 of 2002 on the file of the Special Judge-cum-Chief Judicial Magistrate, Coimbatore and acquit the appellant/accused.

For Appellant : Mr. A. R. Suresh

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

J U D G M E N T

This appeal is preferred by the accused against the judgment of the learned Special Judge-cum-Chief Judicial Magistrate, Coimbatore in Spl.C.C.No.3 of 2002 dated 12.11.2008 convicted him under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to undergo 5 years Rigorous Imprisonment for each of the charge and also imposed to pay a fine of Rs.31,000/-, in default to undergo 1 year Rigorous Imprisonment.

2. Gist of the case:-

While the appellant was serving as Junior Engineer in Coimbatore Corporation, North Zone, during November 2002, he had demanded a bribe of Rs.31,000/- from one S.Sathishkumar[defacto complainant] to forward a building plan application to the Director of Town and Country Planning. Pursuant to the said demand, he has received a sum of Rs.31,000/- from Sathishkumar on 29.12.2000 at the defacto complainant's office, which was recovered by the Trap Laying Team under mahazar and put to trial for offence punishable 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.

3. The prosecution through examining the witnesses PW1 to PW17 and marking Exs.P1 to P20 and M.Os.1 to 7, had substantiated the charges against the accused. Aggrieved by the same, the appellant has questioned the trial Court judgment on the ground that the entire scenario has been created by one Thangavelu, former colleague of the appellant, since Mr.Thangavelu was trapped by DV and AC, to wreck vengeance, he has set up the complaint through PW-2[Mr.Sathishkumar], who is none other than the brother-in-law of the said Mr.Thangavelu. One Iyyakkal, from whom the defacto complainant [Mr.Sathishkumar] has taken power of attorney to construct three storied building and for which, he sought for building plan approval, is sister of Mr.Thangavelu. The trial Court has convicted the appellant relying upon the evidence of PW2 [Mr.Sathishkumar] and PW3 [Mr.Palanisamy]. Unmindful of the fact that both of them are close friends and the complaint has been motivated by Mr.Thangavelu the brother-in-law of PW2 [Mr.Sathishkumar]. The discrepancies between the evidence of PW2 [Mr.Sathishkumar] and PW3 [Mr.Palanisamy] how they know PW9 [Ms.Iyyakkal] has not been taken note by the trial Court, while rendering the conviction judgment. In the absence of cogent evidence to prove the demand of any illegal gratification by the appellant which is sine non qua to base any presumption under the Prevention of Corruption Act, 1988, the trial Court ought not to have convicted the appellant. Further, the trial Court has failed to appreciate that the long delay in lodging the complaint itself belies the truthfulness of the defacto complainant and furthermore, the appellant has recommended to reject the regularisation application as early as on 18.11.2000 itself. Therefore, the allegation of demanding illegal gratification on 18.12.2000 and 27.12.2000, are concocted story designed by Mr.Thangavelu and the same was executed through PW2 [Mr.Sathishkumar] and PW3[Mr.Palanisamy]. Therefore, the trial Court judgment is liable to be set aside and this appeal ought to be allowed.

4. The learned Government Advocate (Crl.Side) appearing for the respondent, as a reply to the grounds of the appeal, submitted that, the trial Court has correctly gone into the evidence of PW2[Sathishkumar/defacto complainant] and PW3 [Mr.Palanisamy] the partner of PW2[Mr.Sathishkumar] and both of them have deposed about the demand and acceptance of Rs.31,000/- by the appellant as illegal gratification. The allegation about the relationship of defacto complainant and Mr.Thangavelu with whom the appellant had some misunderstanding, is nothing to do with the present case and the case of Mr.Thangavelu, who was involved in another Vigilance and Anti-Corruption case, has no relevancy to the present case. Whether the said Mr.Thangavelu had any ill-will or enmity towards the appellant is an irrelevant fact. Likewise, the relationship between the defacto complainant and his principal Iyyakkal is not plausible explanation for the appellant for receipt of Rs.31,000/- from the defacto complainant at the defacto complainant's office. The contention of the learned counsel appearing for the appellant that the application for permission was rejected a month earlier to the trap, is not true. Hence, there is no error or perversity in the judgment of the trial Court. Therefore, this appeal is liable to be dismissed.

5. From the evidence let in by the prosecution, this Court finds that one Sathishkumar[P.W.2] and P.W.3 [Mr.Palanisamy] were partners in Saravana Real Estate having office at No.47 Shri Lakshmi Nagar, Ganapathy, Coimbatore. The said Sathishkumar has obtained power of attorney from one Iyyakkal for Plot S.No.427 in 433/1 in Lakshmi Nagar, Ganapathy, Coimbatore and applied for permission to construct three storied building. His application dated 16.11.2000 addressed to the Director of Town and Country Planning, Chennai, is marked as Ex.P2. This application has been submitted at the office of the Junior Engineer (Planning), North Zone, Coimbatore, on 17.11.2000. The appellant herein has inspected the premises on 18.12.2000. He has found certain violation in the existing building contrary to the planning permission obtained by Iyyakkal. This has been pointed out by the appellant to P.W.2 [Mr.Sathishkumar] and the appellant has demanded Rs.31,000/- to recommend the case for exemption. Since PW2[Mr.Sathishkumar] was not inclined to give any illegal gratification, he has approached the District Vigilance and Anti-Corruption and given a complaint [Ex.P3] on 29.12.2000. Thereafter, on receipt of this complaint, P.W.15 [Mr.C.Vivekananthan], Superintendent of Police, the Vigilance and Anti-Corruption has preferred an entrustment mahazar [Ex.P4] on 29.12.2000 at about 3.30 p.m., and asked PW3[Mr.Palanisamy] to give the tainted money to the appellant, if he demands.

6. As per the prosecution case, P.W.2[Mr.Sathishkumar] was called at the appellant's office at about 4.35 p.m., and met the appellant. On seeing PW2[Mr.Sathishkumar], the appellant has enquired him, whether he has brought the money, when he answered in affirmative, he demanded the same and received it and assured P.W.2[Mr.Sathishkumar] that he will make necessary correction in the application and forward the same to the Director of Town and Country Planning and thereafter, the Trap Laying Team has entered into the office of the appellant. After conducting hand wash test with sodium carbonate solution, the appellant was interrogated by the police and the tainted money of Rs.31,000/- had been recovered from the pant pocket. The pant pocket has also proved the presence of phenolphthalein. The prosecution has marked the currencies as M.O.3 series. The hand wash and pant wash samples were marked as M.Os.4 to 6. The pant of the accused was marked as M.O.7. PW14 [Mr.Thamaraiselvan], has given chemical analysis report which was marked as Ex.P16 and has deposed that the hand wash and pant wash contains phenolphthalein. The trial Court, considering the evidence of PW2 [Mr.Sathishkumar], PW3[Mr.Palanisamy], and PW5 [Mr.Rajendran] accompanying witness, the demand and acceptance of tainted money upheld with the fact that the presence of phenolphthalein in hand wash and pant wash of the accused, has concluded that the demand and acceptance of illegal gratification by the appellant is proved by the prosecution.

7. The discrepancies pointed out by the appellant's counsel that both PW2[Mr.Sathishkumar] and PW3[Mr.Palanisamy] have deposed that the bribe money is of Rs.31,000/-, out of which, a sum of Rs.29,500/- was drawn by PW3[Mr.Palanisamy] from the bank account and a sum of Rs.1,500/- was given by PW2 [Mr.Sathishkumar]. There is a contradiction between these two witnesses as to who had actually given the sum of Rs.1,500/-, since both claim that they gave the money, it makes the case of the prosecution doubtful. Likewise, PW2[Mr.Sathishkumar] Power agent says his principal Iyyakkal was introduced by PW3-[Mr.Palanisamy], which was denied by PW3 [Mr.Palanisamy] in his cross examination. Further, it is admitted by all the witnesses including PW2 [Mr.Sathishkumar] that Iyyakkal is sister of Thangavelu and Thangavelu is brother-in-law of PW2 [Mr.Sathishkumar].

8. Further, it is contended by the learned counsel appearing for the appellant that the application of PW-3[Mr.Palanisamy] was rejected as early as 18.11.2000 and therefore, there is no reason to demand money for forwarding the application of regularising the plan.

9. Whether PW2[Mr.Sathishkumar] gave the remaining Rs.1,500/- or PW3[Mr.Palanisamy] gave the remaining Rs.1,500/-,

which is a very insignificant fact, since the total bribe money of Rs.31,000/- had been given to trap laying officer during the entrustment proceedings marked as Ex.P4 and the currency numbers form part of the entrustment mahazar. This document is prior to the trap. During the trap, some currency had been recovered from the seizure mahazar.

10. The power of attorney document Ex.P14 is dated 14.11.2000. The application of PW2[Mr.Sathishkumar] seeking regularisation is 16.11.2000. Therefore, the contention of the appellant that the request was rejected immediately after the receipt of the application, is unsupported. Further, both PW2 [Mr.Sathishkumar] as well as PW5[Mr.Rajendran] the accompanying witness have specifically deposed that on 29.12.2000, when they met the appellant [Mr.Sankaranarayanan] at his office, he told that there are some corrections in the application, which he will rectify and enquired, whether he has brought the money demanded. Thereafter, PW2[Mr.Sathishkumar] has tendered Rs.31,000/- which was received by the appellant in his right hand, after examining the currency he has kept it in his right side pant pocket. Therefore, the grounds pointed out by the appellant does not carry any plausible explanation for receipt of the money. The alleged enmity between him and one Thangavelu appears to be an imaginary defence. The defence witness Mr.Jothilingam[D.W.1] has not drawn any materials to discredit the evidence of the prosecution.

11. In the said circumstances, the judgment in Mukhtiar Singh (since deceased) through his L.R., v. State of Punjab reported in [AIR 2017 SC 3382] relied on by the appellant is factually different and not applicable to the present case, since the prosecution has not only proved the recovery of tainted money, but also there is no explanation on the part of the accused for receipt of money from the defacto complainant, except alleging motive. Similarly, the demand of Rs.31,000/- by the appellant is spoken by the defacto complainant as well as the accompanying witness. The fact that the appellant inspected the premises, is not denied. On 29.12.2000, the presence of the appellant in his office and recovery of the tainted money from his possession, is also not denied by the appellant. His response to the incriminating evidence put forth before him under Section 313 Cr.P.C., does not come out with any plausible explanation for receipt of the money from the defacto complainant. The recovery of tainted money from the appellant is proved through eye witness and in the recovery mahazar Ex.P8. The appellant has affixed his signature.

12. In the above said circumstances, this Court finds no lacuna in the reasoning of the trial Court judgment. When the witnesses in unison has spoken about the demand and acceptance of money and the fact of recovery of tainted money from the

possession of the appellant indicates that the money has been received by the appellant as illegal gratification to forward the application submitted for building regularisation. The illusionary enmity or motive as projected by the appellant has no legs to stand because the witnesses PW3[Mr.Palanisamy], PW5 [Mr.Rajendran] and trap laying officer [PW15-Mr.C.Vivekananthan] are all independent persons, who have no axe to grind against the appellant and no reason to depose falsehood against him. Hence, this Court finds no error in the judgment of the trial Court.

13. However, while considering the sentence imposed upon the appellant, this Court is of the view that the leniency has to be shown to the appellant, taking note of the period consumed for concluding the trial and appeal and also the age of the appellant. Hence, the sentence imposed on the appellant is modified as under:

Conviction for the offence under section	Sentence imposed by the trial Court	Sentence modified by this Court
7 of PC Act, 1988	to undergo RI for 5 years	to undergo RI for 2 years and to pay a fine of Rs.31,000/- i/d to undergo 1 year RI
13(2) r/w 13(1) (d) of PC Act, 1988	to undergo RI for 5 years	to undergo RI for 2 years and to pay a fine of Rs.31,000/- i/e to undergo 1 year RI

The substantive sentence of imprisonment shall run concurrently. Period of sentence already undergone by the appellant shall be set off under Section 428 of Cr.P.C. No change in the fine imposed by the trial Court. The Criminal Appeal is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Special Judge Cum Chief judicial Magistrate
Coimbatore.

2. The Director
Vigilance and Anti Corruption
Chennai.

3. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Coimbatore.

4. The Superintendent, Central Prison, Coimbatore.

5. The Public Prosecutor, High Court, Madras.

+1 CC to Mr.A.R.Suresh, advocate sr 72727.(09/11/2017)

Crl.A.No.819 of 2008

NRJK (CO)
SP (08/11/2017)



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