

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 14.09.2017****PRONOUNCED ON : 22.09.2017****CORAM:****THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN****Criminal Appeal No.875 of 2012**

G.Malaimani ... Appellant

.. Vs ..

State rep. By
The Inspector of Police,
CBI/ACB, Chennai.

.. Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) Cr.P.C., against the conviction and sentence made in Spl.C.C.No.5 of 2010 on the file of the learned Special Court cum Principal Judge, Puducherry dated 14.12.2012.

For Appellant : Mr.M.Shajahan, for
Mr.R.Dhanram

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI cases)

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JUDGMENT

The appellant herein was tried for offences under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, alleging that on 24.03.2010, the appellant demanded and received a sum of Rs.20,000/- from one Mr.Kaliaperumal for clearing the bills for the work relating to repairs and alteration to the Seagulls restaurant, which was commenced on 01.06.2009 and completed on 30.06.2009 and for conversion of office room into computer room in the Civil Supplies Office building, Thattanchavady which was commenced on 10.12.2009 and completed on 10.02.2010. Knowing fully well that it is an illegal demand of gratification, the criminal law was set to motion based on the complaint (Ex.P.4) given by Mr.Kaliaperumal, Building Contractor on 22.02.2011 alleging that he completed the work of renovating the Seagulls restaurant on 30.06.2009 and after completing the work, he raised the bills for payment. When the defacto complainant met Mr.Malaimani, Junior Engineer, (the appellant herein), he promised to clear the bills but he did not clear it. On 19.03.2010, the appellant contacted Mr.Kaliaperumal (P.W.2) over phone and told him that he want to discuss about his bills so to contact him over phone on 23.03.2010. Accordingly, Mr. Kaliaperumal (P.W.2) contacted Mr.Malaimani, the

appellant herein, over phone on 23.03.2010. At that time, the appellant, Mr.Malaimani demanded Rs.20,000/- as bribe to clear the two bills worth Rs.3 lakhs pertaining to the work he done in respect of renovating Seagull restaurant and the conversion of the office room into computer room in the Civil Supplies Office Building at Thattanchavady. Not inclined to give bribe, he given a complaint to the Central Bureau of Investigation on 24.03.2010. Based on his complaint, the Central Bureau of Investigation, has prepared an entrustment mahazar on 24.03.2010, in the presence of defacto complainant, independent witnesses and the Trap Laying Officer – Mr.N.Raja.

2.After demonstrating the trap proceeding and the same being reduced into writing as an entrustment mahazar - Ex.P.6, the defacto complainant along with the accompanying witness and the Trap Team, were waiting at the tea stall, where the appellant alleged to have asked the defacto complainant to come and deliver the bribe money.

3.It is the case of the prosecution that on 24.03.2010, at about 16.35 hours, they reached the tea stall near Chinamani gundu, to the spot, where the appellant was asked the defacto

complainant to come and give money and they were waiting for the appellant's arrival. At about 16.50 hours, the appellant came in a bullet motor cycle and stopped near the tea stall and spoke to the defacto complainant Mr.Kaliaperumal, for a minute, and received the tainted money from Mr.Kaliaperumal and put it into his left hand shirt pocket. The Trap Team and the independent witness saw the above transaction. Thereafter, they surrounded the appellant Mr.Malaimani.

4.After conducting phenolphthalein test, on the hand of the appellant/accused, in the sodium carbonate solution, they found on dip of his hands in the colourless solution, the solution colour turned to light pink. However, the right hand dip of the accused/appellant did not show any apparent change in colour. Both the hand wash water was collected in separate bottles and sealed. Thereafter, on enquiry, the appellant/accused admitted receipt of money from the defacto complainant. Therefore, the Trap Laying Officer asked one of the independent witnesses Mr.Pichaimuthu (P.W.3) to take the currency from the left side shirt pocket of the appellant/accused and to tally the currency note serial numbers mentioned in the entrustment mahazar. The numbers tallied and therefore, the tainted currency were also seized. The seizure procedure were

reduced into writing and the same is marked as Ex.P.7.

5.To prove their case, the prosecution has examined 10 witnesses and marked 39 exhibits besides 5 material objects which includes the cash of Rs.20,000/- and bottles containing hand washes and the shirt wash of the appellant. On behalf of the accused, 30 exhibits were marked however, no witness was examined.

6.The trial Court, considering the evidence let in by the prosecution as well as the defence held that, the prosecution has proved the charges of demand and acceptance of bribe money by the appellant/accused through the document – Ex.P.5 and oral evidence of witness P.W.2 & P.W.8 besides, the corroborative evidence of the accompanying witness - P.W.3. The explanation given by the accused that the money was received by him from the defacto complainant to pay the same to one Mr.Subramanian and Mr.Mayilai Vel for the supply of materials to the defacto complainant, was not accepted by the trial Court, as a plausible explanation. Accepting the prosecution case, the trial Court held the accused guilty of the offences under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

7.The learned counsel for the appellant submitted that the trial Court has miserably failed to appreciate the evidence in its proper perspective. Further, the trial Court failed to see that the prosecution has miserably failed to prove the demand and acceptance of bribe money and the explanation given by the accused/appellant were not at all considered. The defacto complainant, the Contractor, who was enmical with the appellant has given a false complaint with baseless charge and the documentary evidence produced by the prosecution as well as the defence clearly indicate that there was no renovation work carried by the defacto complainant at the Seagulls restaurant during the relevant period and the defacto complainant himself has admitted in his evidence that the appellant is not connected with the award of conversion work at Civil Supplies Building, Thattanchavadi. Since, both the incidents mentioned in the charge proved to be false and imaginary, the trial Court ought to have acquitted the appellant instead, convicted him without any legal basis.

8.The learned Special Public Prosecutor (CBI cases) appearing for the respondent submitted that the factum of pendency of bills presented by the defacto complainant is proved through the oral

evidence of defacto complainant as well as P.W.5 and P.W.6. The receipt of bribe money proved through the oral evidence of P.W.2 and P.W.3 as well as from the scientific report of hand wash and shirt wash of the appellant which has proved positive for the presence of phenolphthalein test. Further, the very admission of the accused/appellant about the receipt of money from the defacto complainant and the evidence of P.W.2 and P.W.3 regarding the demand made by the appellant just before obtaining the bribe money is suffice to prove the demand and acceptance of illegal gratification by the appellant. The explanation given by the appellant for the receipt of money is unacceptable because, the outsourcing of contract by the successful bidder cannot be facilitated by the public servant. Such a deviation itself will be a misconduct and contra to the terms of the tender.

9.Regarding the sanction, the learned Special Public Prosecutor (CBI cases), submitted that it is a valid sanction given by the competent authority after due application of mind and therefore, unassailable.

10.On perusal of the evidence let in by both parties and the submissions made by the respective counsel, the following facts are not disputed.

11.The appellant – Mr.Malaimani was Junior Engineer attached to Public Works Department, Puducherry Government. He belongs to 'B' Grade officer at the relevant point of time and he was incharge of supervising the work related to Tourist Department. The defacto complainant is a recognised Grade 5 contractor under the Public Works Department, Puducherry. On 24.03.2010, the appellant - Mr.Malaimani has received Rs.20,000/- from the defacto complainant near the tea shop at Chinna Mani Gundu and the same was recovered from his possession by the Trap Laying Team.

12.The disputed facts are the appellant being a Group 'B' Officer, only, the Lieutenant Governor is the competent authority to remove him and not the Under Secretary to the Government. The sanction order issued by the Under Secretary, Public Works Department, is defective and invalid. The charge against the accused appellant is that he demanded bribe to clear the bill raised by the defacto complainant for the work he did in Seagulls restaurant during the period, 01.06.2009 to 30.06.2009. Whereas, at that point of time, for the said work, the bill was cleared long before the date of complaint. The allegation of the defacto complainant that bills to a tune of Rs.3 lakhs was pending at the end of Public Works Department is false and not supported by any record. Further, the second work namely, conversion of office room

into computer room in the Civil Supplies Office Building at Thattanchavadi, the defacto complainant himself has admitted that only Mr.Balaguru - the Junior Engineer was in charge of the work and not the appellant herein and there was no connection between that work and the appellant. The defacto complainant himself has given a letter on 09.12.2009 admitting the door fabrication work at Seagulls restaurant was done by Mr.Subramani and the rectification work was done by Mr.Mayilai Vel, during the year 2009 and he agree to pay the money to them at the earliest. Thus, Rs.20,000/- paid by the defacto complainant on 24.03.2010 to the appellant/accused was only towards the money he owe to Mr.Subramani and Mr.Mayilai vel and not bribe money, as contended by the prosecution.

13.The sanction order is marked as Ex.P.1. The reading of the sanction order shows clear application of mind and issued by the Lieutenant Governor through the Under Secretary to Government (P.W.D) Chief Secretariat, Puducherry. The sanction order has been issued by the order of Lieutenant Governor. So, the sanction order is perfectly valid.

14.From the evidence of P.W.4 – Mr.Swaminathan, who is the then Executive Engineer, Special Buildings Division – I, Public Works Department, Puducherry, it is clear that the value of the contract to

renovate Seagulls restaurant was Rs.1,22,986/- for which, the defacto complainant was nominated to complete the work. Accordingly, he has commenced the work on 01.06.2009 and completed it on 03.06.2009. His request to allot the work on nomination basis is dated 01.06.2009 and marked as Ex.P.4. For the said work, the defacto complainant - P.W.2 had been paid Rs.1,22,986/- on 31.03.2010, vide letter dated Ex.P.14. This letter clearly indicates that Mr.Kaliaperumal, Prop. M/s.Radha Decors, Puducherry has taken up the work through his firm on nomination basis at the estimated rate of Rs.1,22,986/- including VAT. So, no other bill was pending from Public Works Department to the defacto complainant on the date of his complaint dated 24.03.2010. It is admitted by the defacto complainant himself that the appellant was not incharge of conversion office room into computer room of the Civil Supplies building, Thattanchavadi and it was Mr.Balaguru (P.W.6) who was incharge of that work. P.W.6 also endorsed the fact that the appellant had no connection whatsoever with the work related to the conversion of office room into computer room of the Civil Supplies Office Building, Thattanchavadi. All the witnesses

examined on behalf of the prosecution from the Public Works Department have categorically stated that the second work namely, conversion of office room into computer room in the Civil Supplies Office Building, Thattanchavadi, was not within the purview of the appellant. Therefore, the very basis of the complaint given by P.W.2 that to pass the bill to the tune of Rs.3 lakhs, the appellant herein demanded Rs.20,000/- fails. The prosecution evidence undoubtedly indicates only Rs.1,22,986/- was due to P.W.2, on the date of the complaint. In the light of obvious falsehood projected by the defacto complainant, the explanation offered by the appellant gains probable. If viewed, cumulatively, it could be very well understood that P.W.2 has lodged the complaint at the advice of one Mr.P.K.Devadass, erstwhile registered Contractor under the Public Works Department, who was blacklisted at the instance of the appellant herein.

15.The records disclose that the renovation of Seagulls restaurant was to be done within a period of three days. The defacto complainant for the said purpose has taken the assistance of Mr.Subramani and Mr.Mayilai Vel. In this connection, he owes some money for supply of materials by them. That is the reason why he has given a letter to the defacto complainant in his letter head

promising to pay them for the goods supplied. In connection with the renovation of Seagulls restaurant. Ex.D.11 goes to show that there was some money transaction between Mr.Subramani and Mr.Mayilai Vel, for which, the appellant herein had mediated in the chamber of Assistant Engineer, in the presence of one Assistant Engineer one Junior Engineer – I. The said letter Ex.D.11 has been marked through P.W.2 himself during cross examination. P.W.5, in his cross examination admits that the restoration of Seagulls restaurant work was entrusted to the defacto complainant – P.W.2, on nomination basis and he completed the work through Mr.Subramani and Mr.Mayilai Vel. P.W.2 and agreed to pay them through the appellant herein.

16.In the light of the overwhelming evidence to presume that the money received by the appellant from the defacto complainant was probably towards settling the dues to Mr.Subramani and Mr.Mayilai Vel, the conviction based on the motivated witness who has given a complaint with false information cannot sustain.

17.In the result, the Criminal appeal is allowed and the conviction and sentence imposed by the trial Court in Special C.C.No.5 of 2010 dated 14.12.2012, are set aside. The

appellant/accused is acquitted from the charges. The bail bond, if any executed by the appellant/accused shall stand cancelled. Fine amount, if any shall be refunded to the appellant.

22.09.2017

Index : Yes / No
Speaking order/non speaking order

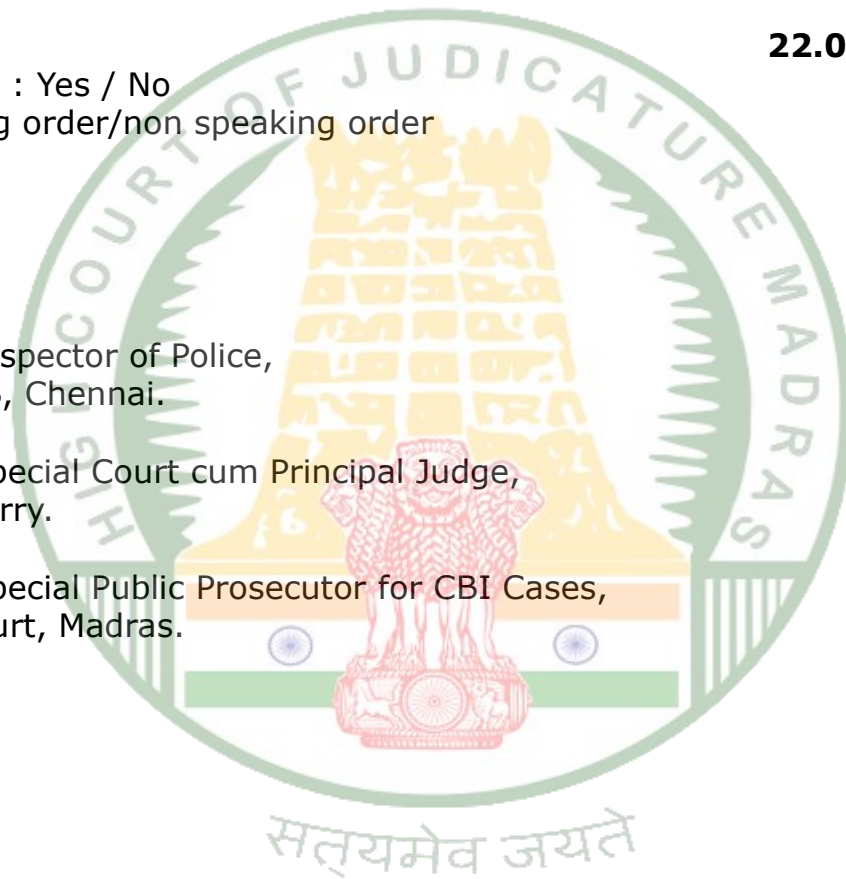
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To

1.The Inspector of Police,
CBI/ACB, Chennai.

2.The Special Court cum Principal Judge,
Puducherry.

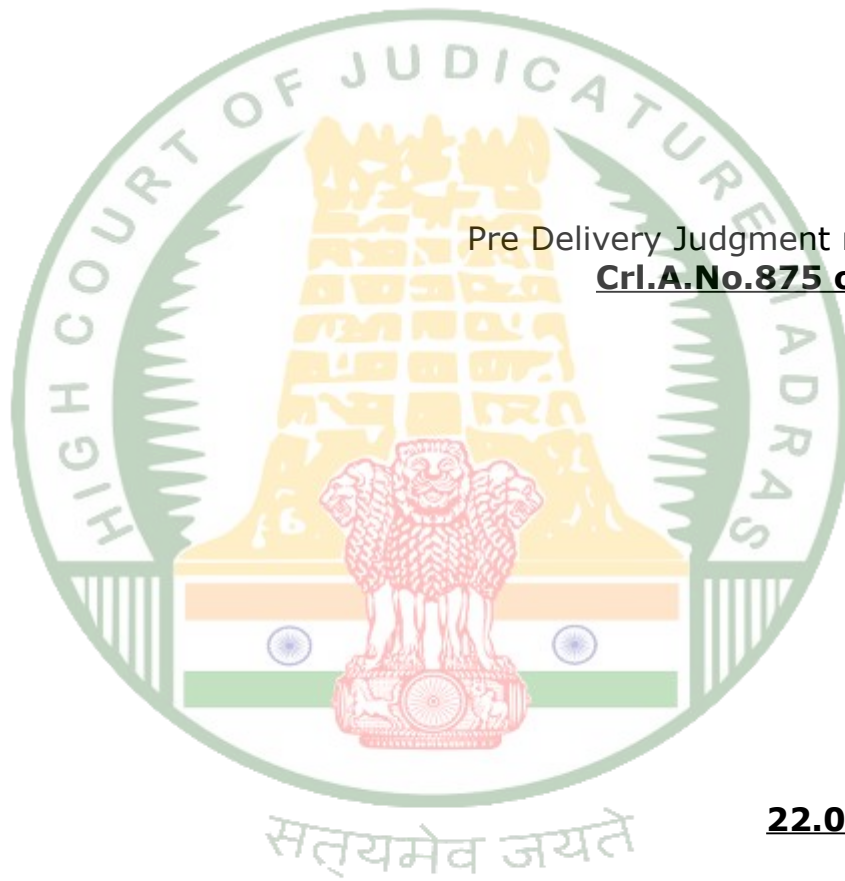
3.The Special Public Prosecutor for CBI Cases,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgment made in
Crl.A.No.875 of 2012

22.09.2017

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