

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.10.2017

PRONOUNCED ON:26.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.735 of 2013

The Inspector of Police,
Vigilance & Anti Corruption Wing,
City Special Unit-I, Chennai. ... Appellant/Complainant

Versus

S.Jacob ... Respondent/Accused

Criminal Appeal is filed under Section 378 Cr.P.C.,
against the judgment in Special Case No.7/2007, dated 27.03.2013
on the file of the Chief Judicial Magistrate, Tiruvallur.

For Appellant ... Mr.C.Iyyapparaj,
G.A(Crl.Side)

For Respondent ... Mr.V.Kannadasan

JUDGMENT

The State is the Appellant. This criminal appeal is directed against the judgement of the trial court acquitting the respondent/accused from the charge of demand and acceptance of Rs.5,000/- as illegal gratification for issuance of solvency certificate.

2. The case of the prosecution as projected before the trial court through the final report on completion of investigation is that, the respondent/accused while serving as Thasildar, Ambattur, Thiru Kannan, on behalf of Tmt. Arulmathi and Tmt. Ezhilmathi gave an application on 22.08.2005 for issuance of solvency certificate for Rs.10 lakhs for the land bearing S.No. 124/1-A2 at Nolambur Village, Ambattur Taluk. When Kannan met the respondent on 29.08.05 at his residential quarters, the respondent initially demanded bribe of Rs.20,000/- i.e 2% of the value of the solvency certificate and later reduced to Rs.10,000/-. He further said, to met him on 2.9.05 at his residence with advance of Rs 5000/- and the

balance 5000/- must be paid at the time of issuing solvency certificate. Since the employer of Kannan was not inclined to pay bribe, as per his instruction Kannan gave a complaint before the appellant on 1.09.2005 at 17.00 hrs. and same was registered and took up for investigation by the Inspector of Police, DV & AC, Chennai.

3. On 2.09.05, the witnesses were called to DV & AC office. At about 7.15 hrs., the mahazar was drawn in respect of pre-trap proceedings and entrustment of tainted money smeared with phenolphthalein power on it. The defacto complainant Kanan along with the shadow witness Kumanan were asked to go to the Thasildar quarters at about 10.30 am. Since his house was found locked the decoy witnesses as well the trap team has proceeded to Thasildar office. Having come to know that the respondent has gone to High Court they waited for him all throughout the day. At about 4.30 pm, the respondent, came to his office and after attending meetings, he invited visitors at about 7.00 pm. The defacto complainant Kannan along with shadow witness Kumannan went to the Thasildar room, Kannan enquired about solvency certificate with the respondent/accused. The accused told him that his file has not yet come to him and enquired whether he has brought the bribe money he demanded. Then, Kannan took out Rs.5,000/- (Rs.500/- x 10) smeared with phenolphthalein and gave it the respondent/accused. The respondent received the money and kept it on his table. Called the Office assistant to bring the file and signed the certificate. Kannan and Kumannan left the Thasildar room and gave the pre arranged signal to the police. The police headed by trap laying officer Subramanian entered the room of the respondent/accused, and asked him to dip his right and left hand separately in the sodium carbonate solution. The hand wash were collected separately and sealed. The tainted money found on the table of the accused was recovered under recovery mahazar. The lab report of the sample solution found positive of phenolphthalein.

4. Based on the statements of witnesses and the records collected during the investigation, the trial court framed charges under section 7 and 13 (1) (d) r/w 13(2) of the Prevention of corruption Act 1988 and tried the accused.

5. To prove the charges the prosecution has examined, 10 witnesses marked 11 exhibits and 5 material objects. After appreciating these evidence placed by the prosecution, the trial court has acquitted the accused holding that the prosecution has failed to establish the demand of bribe acceptance of tainted money and recovery of the alleged bribe money from the accused. To arrive at the said finding the trial court has pointed out the correction in the time of registering the FIR, delay in forwarding the FIR to the court, the defence theory of ill-motive, lacunae in the investigation and contradictions between

the prosecution witnesses regarding the recovery of tainted money.

6. The present appeal is filed on the ground that the previous demand by the accused is spoken by PW-2 the defacto complainant - Kannan and PW-4 Charles Rubastin to whom PW-2 conveyed about the demand of bribe immediately on hearing it from the accused. The presence of phenolphthalein in the hand wash of the accused is spoken by the scientific expert PW-8 and her report Ex P-9 has given a positive opinion about the presence of phenolphthalein in both the hand wash samples collected and the table blanket upon which the tainted money received by the accused kept. Therefore while the demand and acceptance of money is proved, the burden is on the accused to discharge the presumption under section 20 of the Prevention of Corruption Act.

7. Per contra, the learned counsel appearing for the respondent submitted that, the prosecution has totally failed in its attempt to prove the charges. Whereas the defence has established that the case has been foisted to wreck vengeance against the respondent who refused to cancel the patta given to one Jeyasingh in respect of S.No.123/1-A2. The complaint itself is a motivated and handiwork of one Vaikundarajan of VV minerals. The defacto complainant Kannan PW-2 who was a servant of Vaikundarajan planted the tainted money on the table of the respondent on that day and ran away. The respondent and other staff of the Thasildar office tried to catch him but in vein. Soon after, as pre designed, the trap team came and took possession of the tainted money. This fact has been proved positively through the defence witness DW-1 and DW-2 who were present at that time and witnessed PW-2 placing money on the table and hurriedly running out. Further, the prosecution witnesses PW-7 also has spoken the truth and in his deposition has narrated about this fact. Therefore submitted that the appeal deserves dismissal.

8. Point for determination:

Whether the trial court has overlooked any evidence for prosecution which deserves revisit of the its finding ?

9. The re-appreciation of evidence reveals that application (Ex-P-4) for issue of solvency certificate for the property of Tmt. Arulmathi and Tmt. Ezhilmathi was made by PW-2 on 22.08.2015. The kist Rs.1,600/- to the said property was paid on 24.08.2015. The receipt is marked as Ex P-5. Thereafter on 29.08.15, the defacto complainant has paid Rs 3,900/- as fees for solvency certificate. The remittance challan for this payment is marked as Ex P-7. The solvency certificate which form part of the file marked as Ex P-8 reveals that the

respondent/accused has prepared and affixed his signature on 31.08.2015. This document belies the evidence of PW-2 who has deposed that after receiving tainted money from him on 2.9.2015 at about 7.00 pm., the accused called his OA to bring the file and then affixed his signature. If that is true then the solvency certificate should have bear the date as 2.9.2015 and not 31.8.2015.

10. Regarding the tainted money recovered from the table of the accused, five witnesses speak about it. PW-2 who claims that when the accused demanded the money, he give it to the accused. The accused received it and kept it on his table and placed the bell on it. PW-3 who claims to have accompanied PW-2 into the room of the accused, in the cross-examination admits that he was not allowed to enter the Thasildar room by the peon, so he was standing near the door. Thus the evidence of PW-2 that PW-3 accompanied him into the room of the accused and P.W.3 also saw and heard the transaction falls to ground for want of corroboration. PW-9 in his evidence say the money was on the table of the accused and same was recovered. Now if we see the deposition of DW-1 and DW-2 , they both are chance witnesses and were inside the room at the relevant point of time. They both have stated the reason for their presence and the same stands un-impeached. They have deposed that a stranger came to the room placed the currency on the table and left, the accused called the staff and went chasing him. Later as he was advised to give complaint he boarded his vehicle, by the time the trap team surrounded him and took him to the office.

11. When two version both equally probable, the trial court has taken the version of the defence and had acquitted the accused. The prosecution in this appeal is not able to convince this court that the evidence of the prosecution is more reliable and trustworthy or in contrary, the evidence of DW-1 and DW-2 is untrustworthy. The presumption under section 20 of Prevention of Corruption Act can be pressed into service if the demand and acceptance of money is proved beyond doubt. Only then, it can be presumed that the money demanded and accepted as illegal gratification, unless the contrary is proved by the defence.

12. From the facts of the case as placed by the prosecution through its witnesses and document, neither the demand nor the acceptance is proved. Hence the question of drawing presumption under section 20 does not arise. Even on reappraisal and reappraisal of the evidence no other view other than the view taken by the trial court is probable.

13. In the result, the Criminal Appeal is dismissed. The judgment in Special Case No.7/2007, dated 27.03.2013 passed by the Chief Judicial Magistrate, Tiruvallur is confirmed.

gr.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

Copy to:-

1.The Chief Judicial Magistrate,
Tiruvallur

2.The Inspector of Police,
Vigilance & Anti Corruption Wing,
City Special Unit-I, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1CC to MR.V.KANNADASAN Advocate SR.NO.76123

CRL.A.NO. 735 of 2013

SVI [CO]
MK:20/11/2017

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