

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2017

Pronounced on : 04.10.2017

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.817 of 2013

K.Kalainithi

.. Appellant

/versus/

The State Rep.by its
Inspector of Police,
Vigilance and Anti-Corruption,
Vellore,
Vellore District.

.. Respondent

Criminal Appeal has been filed under Section 374 of Code of Criminal Procedure Code to set aside the conviction and sentence imposed on the appellant in Special Case No.2 of 2003 on the file of Special Judge/Chief Judicial Magistrate, Vellore.

For Appellant : Mr.T.Arul for
Mr.S.Paul Gnanamuthu

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

J U D G M E N T

This appeal challenging the judgment of the Special Judge-cum-Chief Judicial Magistrate, Vellore in Spl.C.C.No.2 of 2003, is preferred by the second accused, who was working as Office Assistant in TAHDCO office at Vellore during the relevant point of time and found guilty of abusing his position as public servant to obtain for himself pecuniary advantage.

2. The case of the prosecution is that one Sivakumar[PW-2], who belongs to Adi-dravidar Community, applied for financial assistance to the Tamilnadu Adi- Dravidar Housing and Development Corporation Limited (in short "TAHDCO"), Vellore, on 04.02.2002 and the same was processed by the office of TAHDCO and PW2-Mr.Sivakumar was called for interview by the Manager, TAHDCO, at his office on 09.02.2002 and later, by the Project Officer at Vellore Collectorate on 28.03.2002. He was informed that the loan of Rs.50,000/- has been sanctioned to him and asked to receive the cheque letter on 01.04.2002.

3. When he went to TAHDCO office on 01.04.2002 to collect the cheque letter, a Clerk by name Mr.Venkatesan(A-1) and Office Assistant by name Mr.K.Kalanithi(A-2) demanded Rs.1,500/- to give the cheque

letter. When he expressed his inability to pay bribe and requested for the cheque letter, they have reduced the demand to Rs.1,000/- and asked Mr.Sivakumar[PW-2] to bring the money and get his cheque letter. Again, on 03.04.2002 Mr.Sivakumar[P.W.2] met the accused and requested for his cheque letter. The accused have told him, without money, they will not give him the cheque letter. Hence, Mr.Sivakumar[P.W.2] has lodged a complaint before the Inspector of Police, Vigilance and Anti-Corruption on 04.04.2002 reporting the demand of illegal gratification by the accused persons and sought for action.

4. Based upon the above said complaint, a case under Section 7 of the Prevention of Corruption Act, 1988 was registered on the same day at 10.00 a.m. After conducting the pre-trap proceedings, explaining to the complainant and the shadow witnesses, the Trap Laying Team along with their decoy witnesses reached the TAHDCO office at about 2.45 p.m. The defacto complainant Mr.Sivakumar[P.W.2] along with the accompanying witness Mr.Mani [P.W.3] met Mr.Venkatesan (A-1), who enquired them, whether they have brought the money he demanded. When they said yes, A1[Mr.Venkatesan] told them to meet

A2[Mr.K.Kalanithi] and give the money to A2[Mr.K.Kalanithi]. Accordingly, they met A2 [Mr.Kalanithi], who after confirming whether they brought the bribe money demanded earlier, told the witnesses to wait. At about 4.30 p.m. he came down to the witnesses and received the tainted money of Rs.1,000/- and kept it in his shirt left side pocket. He took them to upstairs room and delivered two covers containing copies of the loan proceedings and cheque letter. One cover addressed to the defacto complainant and another cover addressed to the Branch Manager, Central Bank of India, Latheri Branch, Vellore District. The Trap Laying Team, after receiving the pre-arranged signal from Mr.Sivakumar [P.W.2], entered into the office and the defacto complainant [PW2] identified A-1[Mr.T.Venkatesan] and A-2[Mr.K.Kalanithi] to them. A-2[Mr.K.Kalanithi], on seeing the trap team and he being identified by [Mr.Sivakumar] P.W.2, ran into the Manager's room and tried to dispose of the tainted money. A-2[Mr.K.Kalanithi] was apprehended and his hands were tested with colourless sodium carbonate solution. The solution colour changed to light pink indicating presence of phenolphthalein. The dip of left side shirt pocket into the colour less sodium carbonate solution also turned into pink colour. Thereafter, the tainted money was recovered from a purse lying on the

floor near the wash basin in the Manager's room. Therefore, both the accused were charged for conspiracy and A-1[Mr.Venkatesan] for the substantial charges (i) obtaining illegal gratification and (ii) for abusing official position to make pecuniary advantage. A-1[Mr.Venkatesan] for abetting A-2[Mr.K.Kalanithi] to commit the aforesaid offences.

5. To prove the demand, acceptance of illegal gratification by A-1[Mr.Venkatesan] and A-2[Mr.K.Kalanithi] and the recovery of tainted money from the possession of A-2[Mr.K.Kalanithi], the prosecution has examined P.W-1 to P.W-21 and marked documents Exs.P-1 to P-64 and material objects M.O. 1 to M.O 10. The incriminating evidence was put to the accused under Section 313(1) of the Criminal Procedure Code. The trial Court being convinced by the evidence let in by the prosecution, has held both A-1 and A-2 guilty and sentenced A-1 to undergo one year RI and to pay fine of Rs.500/- in default to undergo one month SI for offence under Section 13(1) r/w 13(2)(d) of Prevention of Corruption Act, 1988 and Section 109 of IPC. A2 is concerned, sentenced him to undergo one year RI and imposed to pay a fine of Rs. 1000/- in default to undergo one month SI for the offence under Section 13(1) r/w 13(2)(d) of Prevention of Corruption Act, 1988 r/w 109 of IPC.

The trial Court directed the sentence to run concurrently.

6. The judgment of the trial Court is challenged by the second accused on the following grounds:-

The evidence of the prosecution witness P.W.2[Mr.Sivakumar] that he gave the tainted money to A-2 [Mr.K.Kalanithi] and A-2 [Mr.K.Kalanithi] received it from him and kept it in his left side shirt pocket, is not corroborated by any of the other prosecution witnesses. Particularly, the evidence of Mr.Muralidaran, Manager was examined as P.W.4 from whose room the tainted money was alleged to have been recovered, Mr.Anbalagan, Assistant Manager was examined as P.W.5 and Mr.Ramadoss, Clerk was examined as P.W.9, does not support the version of the prosecution relating to the recovery of tainted money, hence, conviction solely based on P.W-2 [Mr.Sivakumar] evidence is unjust and lead to miscarriage of justice.

7. The learned counsel appearing for the appellant submitted that, P.W.2 [Mr.Sivakumar] admits that after identifying A-2 [Mr.K.Kalanithi], he was asked to stay outside and he did not saw the recovery of money from A-2 [Mr.K.Kalanithi]. The Manager, Mr.M.P.Muralidaran [P.W.4] has admitted in the cross examination that on 04.04.2002 at about 04.15

p.m., he asked A-2 [Mr.K.Kalanithi] to buy coffee for him. At that time, the defacto complainant [P.W.2] and A-1[Mr.Venkatesan] came to his room. A-1, A-2 and P.W.2 were quarrelling with each other. He told them to go out and instructed his Office Assistant A-2[Mr.K.Kalanithi] to get coffee. At that time, P.W.2 [Mr.Sivakumar] put the purse into the pocket of A-2[Mr.K.Kalanithi]. Immediately, A-2 [Mr.K.Kalanithi] took out the purse and threw it near wash basin. He asked all the three to leave his room. A-2[Mr.K.Kalanithi] left the room to buy coffee and others also left his room. After 5 minutes, The Vigilance Team entered into his room. A-2[Mr.K.Kalanithi] has no influence in respect of sanctioning loan. The Assistant Manager[P.W.5] has also reiterated that A-2[Mr.K.Kalanithi] as Office Assistant has no role in deciding the sanctioning of loan. While PW-9[Mr.Ramadass], Distribution Clerk has categorically stated that on 04.04.2002 he gave the cheque letter to P.W.2[Mr.Sivakumar], after obtaining his signature in the register, the version of the prosecution that A-2[Mr.K.Kalanithi], after obtaining bribe, gave the covers containing cheque letter (Exs.P-6 to P-12) gets falsified.

8. The trial Court has failed to consider these vital discrepancies in the prosecution case. The positive evidence of P.W.4 [Mr.Muralidaran]

who saw P.W.2[Mr.Sivakumar] forcibly putting the purse into the A-2[Mr.K.Kalanithi] pocket and that being thrown away by P.W.2[Mr.Sivakumar] ought not to have been rejected. Having proved the innocence through probability, the appellant is entitled for acquittal.

9. The learned counsel appearing for the appellant, pointing out the portion of the prosecution witnesses, who have spoken about the recovery of Rs.5,000/- unclaimed, contended that, when the Investigating Office has admitted that the complaint of rampant corruption in TAHDCO office was received by the District Collector and in the complaint, specific allegation was made against the Manager. The Investigating Officer ought to have properly probed the case of recovery of purse containing tainted money along with Rs.2,500/- and the unclaimed money of Rs.5,000/- found on the floor outside the Manager's room window. Instead, he has filed final report against A-1[Mr.Venkatesan], a daily wage staff and A-2[Mr.K.Kalanithi]Office Assistant, who are lower rank staff and had no authority or role in disbursing the loan or cheque letter. Since the finding of the Court below is totally perverse, it ought to be set aside.

10. The learned Government Advocate (Crl.side) appearing for the respondent has filed a detailed counter, wherein it is pointed out, how the grounds raised by the appellant are unsustainable and baseless.

11. First, let us analyse the evidence of P.W.4[Mr.Muralidaran], Manager, TAHDCO, Vellore. It is uncontroverted fact that from his room the purse containing tainted money was recovered. In his examination in chief, P.W.4[Mr.Mujralidaran] has deposed about the procedure followed in his office regarding loan for Schedule Caste beneficiaries under the Government Scheme to start agro based industry, trade or service. According to P.W.4[Mr.Muralidaran], A1[Mr.Venkatesan] was not a public servant. He was engaged by them to assist clerical work, when there used to be heavy work. A2[Mr.Kalanithi] was Office Assistant, a public servant. He has deposed about the loan application of Mr.Sivakumar received by his office on 04.02.2002 and duly entered in the register Ex.P-24 at serial No.230 Ex.P25 by Smt.Indira, Junior Assistant, who was examined as P.W.10. The file pertaining to the loan application of Mr.Sivakumar is marked as Ex.P-21. According to PW-4, on 04.04.2002 at about 4.15 p.m., one of the loanee by name Mr.Karnal(examined as P.W-13) was enquiring him about the loan

process and sought for loan application. At that time, his office assistant A-2[Mr.Kalanithi] came to his room and tried to wash his hands. Since there is no water, he could not wash his hands. Soon after, the Inspector, Vigilence Department entered his room and took A-2[Mr.Kalanithi] to the Assistant Manager room and interrogated A-2[Mr.Kalanithi] about receipt of money from P.W-2[Mr.Sivakumar]. Initially, A-2[Mr.Kalanithi] denied but after phenolphthalein test, A-2 admitted the receipt of money from PW-2 and identified the purse lying near the wash basin.

12. During the cross examination, PW-4 had disclosed some more events that about 4.30 p.m. A-1, A-2 and P.W.2 came to his room and quarrelling. He asked them to go out, at that time, P.W.2 tried to place a purse into the pocket of A-2. Immediately, A-2 took out the purse from his pocket and threw it near wash basin.

13. This information elucidated through P.W.2 in the cross examination, according to the learned counsel for the appellant disproves the case of the prosecution. Since the money was forcible placed into the shirt pocket of the appellant and while throwing it out his

hand and shirt pocket has contacted phenolphthalein.

14. The above said submission cannot be plausible for the simple reason that, no one in the rank of Office Assistant (Peon in common parlance) or temporary daily wager could dare to misconduct themselves, enter upon his superior officer room and quarrel unless there is fear of some other greater consequence. Likewise, no person will throw away his purse and simple walk off from his superior's room. Even if he does, the superior officer after seeing purse been thrown, will not keep watching quietly the persons leaving his room without collecting the purse. Therefore, what stated by P.W.4 in his cross examination is partially not true. Further, from the records, this Court finds that P.W.4 was examined in chief on 02.11.2004, 2 1/2 years after the occurrence. He was recalled and cross examined on 11.09.2009 almost after 5 years of his examination in chief. What happened on the eventful day is contemporaneously recorded by way of a mahazar, which is marked as Ex.P-38. In the mahazar, it is vividly explained that while preparing the seizure mahazar, they opened the window of the Manager room, heard some thud sound as if something fell out. When they went out and inspected, they found 100 rupees currency bundle on the floor down

below the window. The bundle consisting of 50 hundred rupees were also seized under the same mahazar.

15. This accidental recovery of money unclaimed coupled with recovery of Ex.P-20 a complaint addressed to the District Collect in the name of Pragalathan alleging gross malpractice in the District TADHCO office by the District Manager Mr.Muralidaran[P.W.4], Mr.Kalanithi[A-2] Office Assistant and Venkatesan[A-1] errand hand of Mr.Maralidaran disclose something rotten happening in the TADHCO office at Vellore and the same was brought to notice to the District Collector, who also happen to be the Project Officer/DRDA. From the endorsement made on the left hand top of the complaint Ex.P-20, it could be seen that the District Collector has forwarded the complaint to Mr.Muralidaran[P.W.4] with endorsement for action and the same has been recovered from the Manager table drawer during the Vigilance Department raid and search. It is an irony that the District Collector has forwarded the complaint to the very same person against whom the complaint made. Any how, fortunately, P.W-2[Mr.Sivakumar] who had grievance about the accused, had given the complaint and co-operated for the trap. Else, the rampant corruption misusing the public fund meant for downtrodden ought not

have come to light.

16. The complaint Ex.P-20 and the recovery of Rs.5,000/- which fell from the closed window of P.W-4 room, when it was opened, has relevancy and this Court could easily see that as the reason for embellishment during P.W-4 cross examination. It appears that the prosecution could not proceed against P.W-4 for want of adequate evidence. That does not mean, the appellant is innocent. The very conduct of the appellant running into the manager room and trying to wash off his hand and throwing the purse near wash basin, is relevant facts under Section 8 of the Indian Evidence Act, 1872.

17. From the evidence of defacto complainant P.W.2, the accompanying witness P.W.3 and trap laying officer P.W.19, it is well proved by the prosecution that on seeing P.W.2 identifying him to the Police, A-2[Mr.Kalanithi] has ran to the manager room. From P.W.4 evidence, it is clear that A-2 went to the wash basin and tried to wash off his hand. Since there was no water, he rushed out. This conduct of the appellant as soon as PW2, identifying him to the trap laying officer, is a relevant fact. The appellant has ran into Manager's room, tried to

wash his hands to remove the trace of phenolphthalein and tried to conceal the purse containing the tainted money. Clearly show his culpable mental state. In this contest, it is appropriate to extract Illustration (f).

18. Illustration(f) to Section 8 of the Indian Evidence Act, 1872 says that The question is, whether A robbed B.

The fact that, after B was robbed, C said in A's presence - "the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

19. Relying upon the admission of PW-4 and PW-5 in their deposition, that A-2 had no authority or role in granting loan, the learned counsel appearing for the appellant emphasised that, A-2 an office assistant, is no way up of influencing the issuance or refusal of loan, the allegation that he demanded bribe for a work, which is not within his capacity, ought to be disbelieved. This line of submission is not tenable. Combined reading of Section 7 and Section 13 of the Prevention of Corruption Act, 1988 especially, the explanation (d) to Section 7 will stand as answer to this plea.

20. Under the Prevention of Corruption Act, 1988, Section 7 explanation (d) the expression **"A motive or reward for doing" is explained as :** - A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

21. Therefore, the said fact elucidated through PW-4 and PW-5 is of no relevance. The specific complaint of PW-2 is that the accused demands bribe to hand over the cheque letter and not that he demands money to forward the loan application or anything related to loan proposal. The Exs.P7, P8 and P9 clearly indicate that, the loan application of the defacto complainant was approved as early as 28.03.2002 and communication has been signed as early as 30.03.2002. As per the deposition of PW-9 [Mr.Ramdass], Clerk just two hours before the trap, the proceedings were given to PW-2[Mr.Sivakumar] and signature was obtained in the ledger. Therefore there is no reason to disbelieve the prosecution case regarding demand and acceptance of bribe money as motive or reward to do an act in the course of his official

function.

22. In this context, it is also appropriate to cite the observation made by Hon'ble Justice Chinnappa Reddy, in the case of similar facts ***Hazari Lal -vs- State (Delhi Administration)*** reported in ***[(1980) 2 SCC 390]*** at para 10 , which reads as follows:

10.It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the presence case lead to the only inference that the money was obtained by the accused from PW3. Under Section 114 of the Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act, is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accuse who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption under Section 4(1) of the Prevention of Corruption Act, is

immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The case was, therefore, rightly convicted by the courts below.

23. The trial Court has convicted the appellant not based on the sole evidence of PW-2 as alleged by the appellant. It has based the conviction on the holistic appreciation of the prosecution evidence. This Court is hasten to add that, even if the trial Court has solely relied upon PW-2 to base conviction, there is no error in it, because the evidence of PW-2 is natural, cogent and un-impeached supported by documentary evidence for every piece of his complaint. The cheque letter and enclosures, which are marked as Exs.P6 to P12 clearly indicates the letters, which ought to have been sent by post to the beneficiary and the bank immediately after 30.03.2002, were not despatched till 04.04.2002, waiting for bribe money to come. Only after receiving the bribe of Rs.1,000/-, A-2[Mr.Kalanithi] has hand delivered the covers to PW-2[Mr.Sivakumar]. The demand and receipt of money and exchange of covers is witnessed by PW-3. Further, the immediate conduct of the accused on seeing the police leaves no doubt, in the Court's mind that the accused had received the tainted money and tried to conceal the

same on seeing the police.

24. For the reasons stated above, this Court finds no point worth re-considering the trial Court judgment. Hence, the Criminal Appeal is liable to be dismissed.

25. In the result, **the Criminal Appeal is dismissed.** Conviction and sentence imposed on the appellant by the trial Court viz., Special Judge cum Chief Judicial Magistrate, Vellore in Special Case No.2 of 2003, are hereby confirmed.

04.10.2017

Index:Yes/No

Internet:Yes/No

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Speaking order/non speaking order

To

1.Inpsector of Police, Vigilance and Anti-Corruption, Vellore,
Vellore District.

2.The Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.

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**Pre-delivery judgment made
in Crl.A.No.817 of 2013**

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