

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

PRONOUNCED ON : 12.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.16 of 2017

The State Rep.by
The Public Prosecutor,
High Court,Madras
[V & AC Chennai Detachment in
Cr.No.39/2009] .. Appellant

/versus/

Tr.P.Kumaresan,
S/o Paramasivam,
Formerly Engineering Director
Tamil Nadu Water Supply and Drainage Board,
Chennai. .. Respondent

Criminal Appeal is filed under Section 378(i)(b) Cr.P.C.,
praying to allow the appeal to set aside the judgment of
acquittal of the respondent/accused passed in C.C.No.22/2013,
dated 31.05.2016 by the Special Judge for Prevention of
Corruption Act Cases, Chennai and convict the respondent/accused
for the charges framed against him in accordance with law in the
interest of justice.

For Appellant :Mr.P.Govindarajan, APP

For Respondent :Mr.A.Venkataraman, Sr.C.for
Mr.R.Manickam

J U D G M E N T

This appeal against acquittal is preferred by the State on
the ground that the trial Court has failed to consider the
evidence of PW.3 [Mr.G.Balasubramanian] regarding demand of
bribe by the accused/respondent during the inspection at
Coimbatore and thereafter, receipt of the same from him and
other Executive Engineers during monthly Review Meeting held at
Chennai. The Court below has failed to appreciate the tell tale
evidence of recovery from the bag of the accused person. The

unexplained possession of Rs.10,000/- in a brown colour cover along with visiting card of PW3[Mr.G.Balasubramanian] and another cover containing Rs.15,000/- besides Rs.20,000/- in his possession were very proved and established through the prosecution witnesses. However, despite consistent and cogent evidence let in by the prosecution, the trial Court has erroneously and perversely held the accused/respondent not guilty of the charges. Hence, the order of acquittal warrants interference.

2. The case of the prosecution is that based on the information that the accused is collecting bribe amount from the Superintending Engineers and the Executive Engineers participating in monthly Review Meeting held on 11.09.2009 at Tamil Nadu Water Supply and Drainage Board [hereinafter referred to as "TWAD Board"] office at Chepauk, Deputy Superintending of Police [V & AC] and District Inspection Cell Officer [PW-2] had conducted a joint surprise check at the office of the accused at 3rd floor of TWAD Board Office on 11.09.2009 at 02.30 p.m. In the course of surprise check, they have recovered two brown colour covers in blue colour rexin bag of the accused. One containing Rs.10,000/- with visiting card of PW-3 [Mr.G.Balasubramanian] and another cover containing Rs.15,000/-. Besides that, in the personal search of the accused, they have also recovered Rs.20,000/- in a torn soiled brown colour cover kept in his left side pant pocket and Rs.4,750/- kept in his purse. The Participant Engineers were put to personal search. From 25 Engineers, a sum of Rs.2,81,900/- allegedly brought by those Engineers to give illegal gratification to the accused person, was recovered.

3. The prosecution, based on the voluntary written statement of PW-3[Mr.G.Balasubramanian] during enquiry, had co-related Rs.10,000/- kept in the brown colour cover along with his visiting card. His statement regarding alleged visit of the accused person to Coimbatore on 17.08.2009, convening the meeting of Engineers and threaten him that he will reduce the strength of the Engineers, if they do not perform. Thereafter, when PW-3 [Mr.G.Balasubramanian] met the accused at Siruvani Guest House on the same day evening at 5.30 p.m., the accused/respondent has specifically demanded bribe and told that bribe should be given to him during the monthly review meeting to be held at Chennai. Accordingly, he brought the money and gave it to the accused person on 11.09.2009.

4. The another sum of Rs.15,000/- found in the second cover alleged to have been by PW-4 [Mr.Ravichandran]. During the investigation, he had admitted that he gave this money to the accused on that day morning, since the accused demanded the same as illegal gratification. Based on the statements of the

witnesses and material objects collected, the prosecution has laid final report against the accused person.

5. The trial Court has framed the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 42 witnesses and 11 exhibits were marked through them besides 6 Material Objects. On behalf of the accused, 26 exhibits were marked and one Sivas was examined as defence witness.

6. After appreciating the evidence let by the prosecution and the defence, the trial Court has acquitted the accused on the ground that the prosecution has failed to prove demand and acceptance of Rs.10,000/- and Rs.15,000/- as illegal gratification from PW-3[Mr.G.Balasubramanian] and PW-4 [Mr.Mr.Ravichandran] for not harassing them in their duty. Since the prosecution has failed to prove the guilty of the accused beyond reasonable doubt by giving benefit of doubt, the accused was acquitted under Section 248(1) of Criminal Procedure Code. The money recovered from the Engineers and marked as M.Os 1 to 3 were ordered to be returned in the respective persons from whom this was recovered and so far as Rs.20,000/- recovered from the possession of the accused person was ordered to be returned to him and the cash recovered from the rexin bag M.O.6 is ordered to be confiscated to the State. Aggrieved by judgment of the trial Court, this present appeal has been preferred for the reason stated in the introduction paragraph of this judgment.

7. Heard the learned Additional Public Prosecutor appearing for the State/appellant and the learned Senior Counsel appearing for the respondent/accused and perused the records available on record.

8. The case of the prosecution is that based on the specific information, they conducted surprise check and during the course of surprise check, they found two brown colour covers in a blue colour Rexin Bag in the room of the accused person. Inside the said Rexin bag, it is alleged that they found two brown colour covers in which Rs.10,000/- along with visiting card of PW-3[Mr.G.Balasubramanian] and Rs.15,000/- respectively were found. The trial Court, after appreciating the evidence, has pointed out that though the blue colour Rexin Bag is alleged to have been found in the room of the accused person, there is no evidence to connect the blue colour Rexin Lunch Bag to that of the accused person.

9. PW-3[Mr.G.Balasubramanian] has given a statement that during the month of September, there was inspection at Coimbatore and at that point of time, the accused stayed at

Siruvani Guest House, demanded bribe and told him to pay money during monthly review meeting to be held at Chennai. It is also the specific statement of PW-3[Mr.G.Balasubramanian] that the accused used to demand illegal gratification during monthly review meeting.

10. The above two statements had been positively disproved by the defence by production of Log Book-Ex.D2 wherein the accused/respondent, on 17.08.2009 was travelling on road between Coimbatore and Udumalpet about 347km between 08.00 a.m., and 10.00 p.m. No record produced by the prosecution to prove the accused stayed in Siruvani Guest House on 17.08.2009. Further, the accused/respondent as a Director of TWAD Board took charge only a month prior to the date of occurrence and the review meeting held on 11.09.2009 was his first monthly review meeting. Hence, there is no truth in the allegation of PW-3 [Mr.G.Balasubramanian] that the accused person demanded bribe on 17.08.2009 and used to demand and collect illegal gratification during every monthly review meeting.

11. Further, the trial Court has pointed out that just before the occurrence, the departmental action was initiated against PW-3[Mr.G.Balasubramanian] for misconduct and a memo was issued. Hence, he had a grudge against the accused since he thought the accused was the man behind this. To prove the same, the appellant has marked Ex.D3-charge memo issued to PW-3 [Mr.G.Balasubramanian]. Furthermore, there is a plausible explanation given by the accused person for possession of Rs.20,000/- with him. Even in the recovery mahazar, it is stated that the accused had explained he is keeping that money to pay flight ticket. To prove the same, the accused has examined DW-1[Mr.Sivas] an Executive of Star Travel Company and had marked Ex.D-26-flight ticket, which indicates that on 11.09.2009, the travel ticket in the name of the accused had been booked for his travel from Chennai to Triuchirappally.

12. Further, the defence exhibits and prosecution witnesses, except PW-3[Mr.G.Balasubramanian], had not supported the case of the prosecution. Insofar as Rs.2,81,900/- recovered from 25 Engineers is concerned, they have given reason for possession of those money.

13. On a reading of Exs.D4 to D24, it appears that the prosecution has in haste taken away all the money possessed by the participants in the review meeting under presumption that those money are meant to give bribe, without considering the fact that the participants have come from far away to Chennai and they had their own personal reasons for possessing cash with them. Without considering those explanations given by them, the prosecution has seized the money from them. Since the trial

Court has rightly considered the explanation given by the accused person and the other Engineers from whom the money has been seized, this Court finds no error in the findings for interference.

14. In the result, this Criminal Appeal is dismissed. The order of acquittal passed by the Special Judge for Prevention of Corruption Act Cases, Chennai in C.C.No.22/2013, dated 31.05.2016 is hereby confirmed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1.The Special Judge for Prevention of
Corruption Act Cases, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+5cc to Mr.R.Manickam, Advocate SR.No.10703

Crl.A.No.16 of 2017

NRK (CO)
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