IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2018

PRONOUNCED ON : 02.07.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.174 and 175 of 2017

K.A.Shajahan .. Appellant in Crl.A.No.174 of 2017

S.Subramanian .. Appellant in Crl.A.No.175 of 2017

/versus/

State by Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Cuddalore, Cuddalore District.
(Crime No.10 of 2000) .. Respondent in Crl.A.No.174 of 2017

State Rep.by
Deputy Superintendent of Police,
V&AC, Cuddalore. .. Respondent in Crl.A.No.175 of 2017

<u>Prayer in Crl.A.No.174 of 2017</u>: Criminal Appeal is filed under Section 374 of the Criminal Procedure Code against the judgment passed by the learned Special Judge for Vigilance and Anti Corruption cases, Villupuram made in Spl.C.C.No.2 of 2014 dated 10.03.2017 convicting the appellant/accused No.1 herein for the offence under Section 7 and 13(ii) r/w 13(i)(d) of the Prevention of Corruption Act, 1988 and sentencing him

to undergo Rigorous Imprisonment of 2 years under each section and to pay fine of Rs.1000/- under each Section in default to undergo Simple Imprisonment of four months and further directing the sentences to run concurrently.

Prayer in Crl.A.No.175 of 2017: Criminal Appeal is filed under Section 374 of the Criminal Procedure Code praying to set aside the judgment of conviction and sentence passed against the petitioner/appellant on 10.03.2017 on the file of the learned Special Judge for Cases under Prevention of Corruption Act, 1988, Villupuram in Spl.Case No.2 of 2014 and acquit him from all the charges.

For Appellants :Mr.R.Rajarathinam for
Mr.R.S.Johnson (Crl.A.No.174/2017)

:Mr.S.Ashokkumar, Sr.C. for
Mr.V.N.Krishnamurthy
(Crl.A.No.175/2017)

For Respondent :Mr.K.Prabakar, APP(both cases)

COMMON JUDGMENT

The appellant in Crl.A.No.174 of 2017 K.A.Shajahan, Sub Registrar and the appellant in Crl.A.No.175 of 2017 S.Subramanian, District Registrar are public servants as defined under Prevention of Corruption Act, 1988. Based on the complaint given by one V.Kannusamy, First Information Report was registered against these appellants on 11.12.2000 for demanding illegal gratification of Rs.10,000/- to do favour by referring his sale deed for adjudication of stamp duty regarding its valuation to the Special Deputy Collector (Stamps), Villupuram District instead of Inspector of Registration, Chennai which will help the complaint to get back his document without delay

2. Thiru.P.Rajendran (PW-17), Inspector, Vigilance and Anti Corruption, Cuddalore, who registered the complaint, arranged for trap to apprehend the accused persons while receiving illegal gratification. Thriu.V.Ganapathy (PW-9), Special Tahsildar (Land Reforms) and Thiru.A.Radhakrishnan, Chief Assistant, Collector Office (not examined) were requested to be witnesses for the trap proceedings. Accordingly, they were present at V & AC office, Cuddalore. In their presence, significance of sodium carbonate phenolphthalein test was demonstrated and the trap money of Rs.7,000/- smeared with phenolphthalein was entrusted to the defacto complainant Thiru.Kannusamy(PW-3) with specific instruction that he should take the money only if the accused demands for it. Thiru.Ganapathy(PW-9) was asked to accompany the defacto complainant to be a shadow witness for the transaction. At about 08.40 p.m., they reached the Sub Register Office, Mylam.

3. The defacto complainant met the Sub Registrar Mr.Shajahan(A1). After ascertaining that the defacto complainant had brought the money, the Sub Registrar Shajahan received the money and kept it in a black colour leather bag of District Registrar Thiru.Subramanian(A2). Thereafter on receipt of the pre-arranged signal from PW-3, the trap team led by Thiru.Rajendran(PW-17), Inspector went to the Sub Register Office, Mylam. After conducting phenolphthalein test in the hands of the appellants, the tainted money of Rs.7,000/- recovered from the black colour rexine bag kept near A2 seat. As a follow up action the room and residence of the second accused as well the residence of the first accused were searched in the presence of the witnesses(PW-10 and PW-13), but no incriminating materials were collected. After completion of the investigation, the prosecution has laid charge sheet against the appellants/accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The substance of the charges against the accused/appellants is that A1 and A2/the appellants herein are the Sub Registrar, Mylam and the District Registrar, Tindivanam respectively. For the purpose of unlawful gain, they had abused their official position and demanded illegal gratification from Thiru.Kannusamy, who registered the property on

10.08.2000 in respect of 3 items of property with total extent of 1.36 acres land, wherein one item of the property with 52 cents being residential land not valued at sq.ft. rate but on cents basis. To avoid referring the document to the Value Fixation Committee at Chennai, instead for forwarding to the document to the Special Deputy Collector (Stamp), Villupuram, the first accused initially demanded Rs.10,000/- for himself and the second accused Subramanian(District Registrar), which was later reduced to Rs.7,000/-. As a consequence on 11.12.2000, at about 08.45 p.m., the first accused demanded and received Rs.7,000/- for himself and the second accused from the defacto complainant Kannusamy in the present of Thiru.Ganapathy.

5. To prove the charges, the prosecution has examined 20 witnesses. 19 exhibits and 3 material objects were marked. In defence, one witness was examined. 2 exhibits were marked. The trial Court held both the accused guilty and sentenced them to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo four months Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one months Simple Imprisonment for the offence under Section

13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The period of sentence was ordered to run concurrently.

6. Aggrieved by the judgment of conviction and sentence, the present appeals are filed on the ground that the trial Court had erred in relying upon the evidence of PW-9 shadow witness even though P.W-3 [Thiru.Kannusamy] the defacto complainant turned hostile. The motive to give a false complaint against the appellants though well established by the defence, the trial Court has failed to appreciate the explanation given by the accused. One item of the properties sought to be registered had not been properly valued, the document was not released to the defacto complainant. Since there was discrepancies in the valuation and description of the property leading to deficit in stamp duty, the document was impounded. PW-3 was asked to pay deficit stamp duty to refer the deed to the Deputy Collector (Stampts). Aggrieved by this, the defacto complainant with the help of one Krishnamurthy, Sub Inspector, DV and AC, had concocted the story as if the appellants have demanded illegal gratification to release the document. His motive was to get back the document without paying the stamp duty to the Government by pressuring the Sub Registrar and District Registrar.

7. It is also submitted by the appellants that while the defacto complainant and other prosecution witnesses turned hostile, the trial Court has erroneously convicted the appellants without any substantive evidence, relying upon the judgment of the Hon'ble Supreme Court reported in *Vinod Kumar v. State of Punjab[CRA No.554 of 2012]*. This judgment on facts have no relevancy to the case under appeal.

8. As far as the second accused Subramanian in Crl.A.No.175 of 2017 is concerned, it is submitted that the tainted money was not recovered from his possession. The black colour rexine bag form which the alleged tainted money recovered has not been proved by the prosecution that the money was kept in the bag with A2 knowledge or consent. The 2nd accused/appellant would mainly canvass that the document which was registered by PW-3 [defacto complainant] on 10.08.2000 was in respect of three properties, out of which one property to an extent of 52 cents was not an agricultural property, so should not have been valued in cents. Being residential plot, it shall have been valued on square feet basis. When this was pointed out to PW-3, he agreed to pay the difference in stamp and sought reference to the Deputy Collector for fixation of the land value as per the guideline value, instead of referring it to the Inspector General of Registration at Chennai. Accordingly, after making inspection of the

property, necessary proceedings were prepared by the Sub Registrar Office. PW-3 Thiru.Kannusamy came to the Registrar Office on 11.12.2000 at about 09.00 p.m., and tendered Rs.7,000/- towards deficit stamp duty. Since it was late night, he was asked to come on the next day and collect the receipt. The District Registrar, who was not present at that time, came to the Registrar Office to park his car and retire to his room which was located near the Sub Registrar office. Mylam. The trap team based on the false complaint given by Kannusamy had erroneously arrested them and also search their premises, which has not resulted in any recovery of material incriminating.

9. The explanation and the evidence of PW-3 who has substantially supported the case of the defence and treated as hostile by the prosecution, ought to have weighed the mind of the trial Court, while deciding his case. Unfortunately, referring judgments which are not relevant to the facts of this case and also applying wrong proposition of law, the trial Court has erred in convicting the appellants. Hence, the judgment of the trial Court should be set aside.

10. Per contra, the learned Additional Public Prosecution appearing for the respondent would submit that the demand and receipt of illegal

gratification is proved by the prosecution through PW-9 [Thiru.Ganapathy] the shadow witness, who had accompanied PW-3 on the day of trap. The explanation of the defence that the Sub Registrar is entitled to collect the deficit stamp charge by cash, is nowhere helpful to the defence case, since the money admittedly received from PW-3, after the office hours and the Sub Registrar need not have waited for payment of stamp charge to forward the document to the valuation committee, when there is no pre-requisite to collect the difference in stamp duty before referring the document to the Valuation Committee. The receipt of Rs.7,000/- after the office hours at 09.00 p.m proves the fact that the said money was not legal remuneration but only an illegal gratification for doing favour to the defacto complainant.

11. The trial Court, after due consideration of the explanation given by the defence, had held that the admission of the appellants about the receipt of the money has not been properly explained or established that it was for the stamp duty which the defacto complainant is liable to pay. In the absence of a plausible explanation to that effect of rebutting the presumption under Section 20 of the Prevention of Corruption Act, 1988, the trial Court conclusion is perfectly in accordance with law. When there is a statutory presumption and the prosecution had proved the demand and

receipt, it is to be presumed that the money received is for illegal gratification other than legal remuneration. The Court cannot ignore the statutory presumption against the appellants, unless it is rebutted by preponderance of probability. In this case, the defence having failed to rebut the presumption is bound to be held guilty. Hence, the trial Court judgment has to be confirmed.

12. Point for consideration:

> Whether the recovery of tainted money from the rexine bag M.O.3 and PW-9 evidence is sufficient enough to draw presumption under Section 20 of the Prevention of Corruption Act, 1988 against the appellants?

13. This is a case, where the receipt of Rs.7,000/- from the defacto complainant (PW-3) is not disputed by the appellants. The fact that on 10.08.2002 PW-3 presented the document for registration and the same was impounded for under valuation, is also undisputed. PW-3 Thiru.Kannusamy is the only witness, who is supposed to depose against the appellant/accused for demand of illegal gratification prior to the trap. Unfortunately he has not whispered about any demand of illegal gratification by the accused in his testimony. The complaint which is

marked as Ex.P5 alleges the demand of illegal gratification by A1 for himself and A2. It narrates the sequence of events from 10.08.2000 the day on which the document was presented for registration till 11.12.2000 the date of complaint. In this regard, it is pertinent to note that the complaint was not written by PW-3. The name of the person, who has written the complaint on the instruction of PW-3, is not mentioned in the complaint. During the examination of PW-3, it is brought to the light that the complaint was written by one Krishnamurthy, Sub Inspector attached to Vigilance and Anti Corruption. He also happened to be a relative of PW-3. The trap laying officer Thiru.P.Rajendran admits that one Krishnasamy mentioned by the defacto complainant is working in Vigilance and Anti Corruption, Cuddalore Unit. PW-3 defacto complainant in his deposition had categorically stated that his document suffered mis-declaration regarding its value and there was demand from the Registrar office for additional stamp duty, when he informed this to his relative Thiru.Krishnasamy, he promised to get back the document without paying any money.

14. Under this circumstances, the complaint Ex.P5 had been lodged alleging demand of illegal gratification. PW-3 and PW-9 are the competent witness to speak about the demand and acceptance of bribe on

11.12.2000. Before the Court PW-9 had said that A1 enquired PW-3 whether he has brought the money. After receiving the money, he promised to forward the papers. This piece of evidence cannot be sufficient to hold the money received is bribe to do some favour abusing the official position. While PW-3 would say further that after receipt of the money, A1 told since it is late for the day, he (A1) will prepare the receipt and give it to him (PW-3) later. PW-9 is silent about this part of the conversation between A1 and PW-3 after transfer of money. This creates doubt whether the money received by A1 was certainly towards illegal gratification or to do some favour by abusing his official position.

15. On the part of the prosecution, PW-3 Thiru.Kannusamy defacto complainant, PW-4 Thiru.Murthy @ Ramamurthy and PW-5 Thiru.M.Rajendiran witnesses to the registration of the subject document have turned hostile. They do not support the case of the prosecution regarding demand of illegal gratification. The other witness PW-6 Thiru.R.Elumalai could only corroborate the evidence of the prosecution regarding the spot inspection done by A2 to ascertain the nature of the land sought to be registered by the defacto complainant. The evidence of PW-4 and PW-6 in this regard could only enforce the fact that one of the property sought to be registered was not properly valued or described,

hence, the document was impounded. When the defence were able to place before the Court that they are empowered to collect cash up to Rs.10,000/- towards deficit of stamp duty and the document registered by PW-3 suffers deficit stamp duty and it has to be necessarily referred to the Valuation Committee, the probability of their innocence cannot be totally ruled out. The hostility shown by the prosecution witnesses, who are suppose to prove the demand and acceptance of illegal gratification by the accused adds enough doubt about the prosecution case.

16. Yet another reason for this Court to interfer the jdugment of the trial Court would be the doubtful nature of the prosecution case regarding the presence of the second accused at the time of trap and his role in demand and acceptance of Rs.7,000/- by A1. PW-3 in his evidence say that after handing over the money to A1, he came out of the office to give signal to the trap team. At that time, A2 entered the Sub Registrar Office. In support of that, DW1 would say that he is the driver of A2. At the end of the day he used to drop A2 at the Sub Registrar Office, Mylam and park the car in the premises of Mylam Sub Registrar Office. A2 used to get down at the Sub Registrar office and go to his room, which is located near the Sub Registrar, Mylam. On the said day, A2 had come to Sub Registrar Office to park his vehicle and proceed to his room. It is not the case of

the prosecution that A2 demanded any money from PW-3. It is neither the case of the prosecution that the tainted money was recovered from the possession of A2. There is no witness to speak against A2 that the black rexine bag marked as M.O.3 belongs to A2 and the tainted money alleged to have been recovered from the black colour rexine bag was kept inside the bag within the knowledge of A2.

17. In the above said circumstances, mere recovery of tainted money from the bag as spoken by PW-9 and the other prosecution witnesses will not lead to presumption that it is bribe money when the explanation given by the person, who has received the money and the evidence of the person, who gave the money indicates otherwise. The presumption under Section 20 of the Prevention of Corruption Act, 1988 is not conclusive but rebuttable. In this case, the appellants have rebutted the presumption and had probablised that the payment was not for bribe but towards deficit stamp duty.

18. In the result, **these Criminal Appeals are allowed**. The judgment of conviction passed by the learned Special Judge for Vigilance and Anti Corruption cases, Villupuram made in Spl.C.C.No.2 of 2014 dated 10.03.2017 is hereby set aside. Fine amount if any paid by the appellants

shall be refunded to them. Bail bond if any executed by the appellants shall be cancelled. M.O.1 (Rs.7,000/-) shall be returned to PW-3 on his application.

02.07.2018

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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To:

1. The learned Special Judge
 for Vigilance and Anti Corruption cases,
 Villupuram.

2. The Deputy Superintendent of Police,
 Vigilance and Anti Corruption Wing,
 Cuddalore, Cuddalore District.

3. The Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.

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Pre-delivery common judgment made in
Crl.A.Nos.174 & 175 of 2017

02.07.2018