IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.421 of 2017

State represented by:
The Public Prosecutor,
High Court, Madras - 104. ... Appellant/Complainant

Vs.

M.Liyakathalikhan ... Respondent/Accused

Prayer: Criminal appeal filed under Section 421 of Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused in Special Case No.01 of 2010 dated 20.05.2016 by the Special Judge/Chief Judicial Magistrate, Cuddalore District and convict the respondent/accused for the charges framed against him.

For Appellant : Mr.P.Govindarajan
Additional Public Prosecutor

For Respondent : Dr.R.Sampath Kumar

J U D G M E N T

This is an appeal against acquittal preferred by the State.

2. The brief facts of the case is that,

the defacto complainant V.P.Kalaiyarasan, sought for income certificate from the Thasildar, Chidambaram to avail bank loan for constructing house. The application was forwarded to M.Liyakathalikhan, Village Administrative Officer, Chidambaram on 20.102008. When the defacto complainant met VAO on 21.10.2008, at 10.00 hours, VAO instructed the complainant to come after two days. Accordingly, the defacto complainant met the VAO at the Thasildar office on 22.10.2008, at about 5.00 pm and when he enquired VAO about the income certificate, it is alleged that VAO demanded Rs.2,000/- as bribe. Hence, the complaint which is marked as Ex.P3. Based on the complaint, the

F.I.R. was registered on 24.10.2008 at 9.00 hours by G.Sekar, Inspector of Police, Vigilance and Anti Corruption, Gudalur. Thereafter, two independent witnesses were called to Vigilance office to be witnessed for the trap proceedings. Tr.Rajendran, Assistant Manager, TAHOCO, Cuddalore and Tr.R.Muralidaran, Assistant in the commercial tax office, Gudalur, were taken as witnesses for the trap proceedings and proceeded to the taluk office, Chidambaram, along with defacto complainant. At about 3.00 p.m, the VAO, M.Liyakanthalikhan came there and had conversation with defacto complainant. Thereafter, as instructed by VAO, a trap went to RDO Office, Chidambaram at about 4.00 p.m. Since VAO alleged to have instructed the defacto complainant to come near RDO Office at about 4.10 p.m VAO came to RDO Office and met the defacto complainant.

3. The case of the prosecution is that VAO demanded Rs.2,000/- and received the same from Kalaiyarasan (defacto complainant) and kept in the shirt pocket immediately. After getting the prearranged signal from the defacto complainant, the trap team led by P.W.13 Sekar, Inspector of Police apprehended the accused, took him inside the RDO Office and the tainted money of Rs.2,000/- was recovered from the possession of the accused. After seizure and collecting the wash from the shirt, and hands for chemical analysis, the accused was arrested and remanded to judicial custody. Before his arrest, his house was also searched but no incriminating material was recovered from his house. Based on these facts, the prosecution on completion of investigation has filed final report.

4. The trial Court on perusal of the records relied by the prosecution, has framed two charges against the accused, one under Section 7 of Prevention of Corruption Act another under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. To substantiate the case, the prosecution has examined 15 witnesses and marked 21 exhibits and four material objects. In support of defence, the accused has exhibited seven documents. The trial Court after analysing the facts, in the light of the evidence let in by the prosecution and referring the judgments of the High Courts and Supreme Court has concluded that there was prior enmity between the accused and the defacto complainant. Since the land given to the defacto complainant by the Government, at free of cost was misused by the defacto complainant by putting up prawn form, the accused being the VAO has informed the violation to the Thasildar and as a consequence, the free patta granted to the defacto complainant and his wife was cancelled vide Ex.P16. To wreck vengeance, the complaint had been lodged by the defacto complainant as if, the accused has demanded Rs.2,000/- for issuing income certificate. It is also pointed out by the trial Court that though the defacto complainant has

stated that he was in need of income certificate to avail bank loan for constructing house, there is no supportive document to substantiate the said plea. Hence, the claim of the defacto complainant that he was in need of income certificate itself is a imaginary reason and it has been invented to fix the accused.

5. Aggrieved by the said order of the acquittal, the State has preferred the above appeal on the ground that the trial Court has arrived at a erroneous conclusion that complaint itself is a false complaint. The patta was cancelled a year back and there is no reason to invent a story to fix the accused person when P.W.2, defacto complainant accompanied witnesses and the trap laying officer P.W.13 has cogently narrated the manner in which the tainted money received by the accused person. It is the burden of the accused to explain the reason for accepting money from the defacto complainant and in the absence of explanation, the trial Court ought not to have taken note of certain other factors, which had happened long back to attribute motive and acquit the accused person. The explanation placed by the accused for receiving the money and the recovery of money from his possession is neither possible nor acceptable. Therefore, the trial Court erred in acquitting the appellant without considering the factum of demand, acceptance and recovery of tainted money from the possession of the accused person.

6. It is contended by the learned Additional Public Prosecutor that the trial Court relying upon the self servicing statement of the accused person submitted during the questioning under Section 313 Cr.P.C., without properly weighing the evidenciary value of such reply as against the evidence let in by the prosecution through witnesses and documents had erroneously acquitted. Since the trial Court has failed to apply Section 20 of the Prevention of Corruption Act to presume the demand and acceptance of Rs.2,000/- is not a legal remuneration but, for abusing his official possession. The accused persons having failed to rebut the presumption, case against the accused, the trial Court judgment is perverse and liable to be set aside.

7. The learned counsel appearing for the respondent/accused submitted that through defence exhibits the accused has established that the complaint Ex.P3 is a malafide complaint tainted with motive, in order to take vengence against the respondent/accused, since he has exercised his official duty in accordance with law and had taken steps to cancel the patta granted to the defacto complainant by the Government under free patta scheme. As VAO, he has brought to the notice of the higher

officials that defacto complainant has violated the terms and conditions imposed on granting free patta. Contrary to the condition instead of using the land for cultivation, he has used for prawn form through culture form vide Ex.D4, he has brought to the notice of the Tahsildar about the violation and as a consequence, after giving due opportunity to the defacto complainant, the patta was cancelled under Ex.P.16. Under such circumstances, the defacto complainant has lodged a false complaint which is marked as Ex.P3 as if the respondent/accused has demanded Rs.2,000/- for issuance of income certificate. The prosecution has not properly investigated the case and in a hurried manner has registered the complaint. The application for income certificate which is marked as Ex.P2 indicates that the defacto complainant required income certificate for availing bank loan. But no document collected by the prosecution to show that the defacto complainant has made any application for bank loan or whether was any necessity for the defacto complainant to get income certificate at all. Further, it has been explained by way of reply under Section 313 Cr.P.C., that the money was trusted into the phenolphthalein pocket of the accused. When the accused pushed it off, he accidentally contacted phenolphthalein. The evidence of P.W.2 who is a motive witness and P.W.3 a official witness who had not adequately corroborated the case of the prosecution, had made the trial Court to hold that the case is based on false complaint and driven out of motive. Since the accused is bestowed of double protection and found to be not guilty after full trial, the trial Court judgment need not be interfered.

8. Heard the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the respondent.

9. It is case of the prosecution that after registering the complaint Ex.P3 on 24.10.2008, the defacto complainant and the trap team has led to the Tahsildar office, Gudalur at 2.00 p.m, at that time, the accused was not in his seat. Therefore, they have been waiting for him. It is the specific case of the prosecution that by 3.00 pm, the accused came in two wheeler to office and met the defacto complainant P.W.2, but he has not demanded money at that time but asked the defacto complainant to meet him after one hour at RDO Office. Accordingly, at around 4.00 p.m, they both have met and tainted money has been given to the accused person. Thereafter, the trap team has taken the accused to RDO Office for further interrogation. The receipt of tainted money is spoken by P.W.2 and P.W.3. P.W.2 say after receiving the money, the trap team come to the spot immediately after his signal to the trap team. The trap laying officer P.W.13 and others came, caught hold of

the accused person and took inside the RDO Office. Accompanied witness P.W.3 also says that the trap team came in and caught hold of the accused. Therefore, it is to be seen with suspicious whether the presence of phenolphthalein found in the hands of the accused due to handling of the tainted money or by holding his hand by the trap laying officer. This may not be of much importance, if the recovery of money has not been disputed by the accused person.

10. However, it is submitted by the accused by way of reply to the question under Section 313 Cr.P.C, the tainted money was trusted into his pocket which he tried to prevent. But immediately, the trap officer caught hold of him and started preparing recovery proceedings dispite his explanation to the trap laying offier. Had there not been any evidence to support the theory of motive, the trial Court judgment would be faulted but through Ex.D1 to D7, the accused has proved that the defacto complainant who has been granted two acres of land under the special scheme of the Government, instead of using the land for the purpose it was granted, had violated the terms and conditions. Therefore, the respondent herein vide Ex.D4 dated 05.07.2007 has written to the Thasildar reporting about the violation of terms of allotment. Pursuant to that, there had been some communication and representation by the defacto complainant to prevent the cancellation of patta. In fact, the defacto complainant has also issued a lawyer notice to the Tahsildar which is marked as Ex.P8 dated 06.04.2008, questioning the legality of the cancellation proceedings. So naturally the grudge upon the VAO who initiated action for cancelling the patta granted for two acres of land in favour of defacto complainant and his wife had caused aminosity in the mind of defacto complainant.

11. Therefore, the view taken by the trial Court that the complaint itself is motivated and the demand and recovery of money has not been proved to the satisfaction of the trial Court that the money was obtained by the accused person as illegal gratification. Therefore, the accused cannot fasten criminal liability on the accused. When two views are possible and one view which is favourable to the accused been accepted by the trial Court, the appellate Court need not interfere in the view expressed by the trial Court unless it is perverse. In this case, the P.W.8 K.Singaravelu, has spoken about the previous animosity between defacto complainant and the accused person regarding the cancellation of patta. This Court, finds that the complaint as such not based on true facts but with invented reason. The prosecution could not able to collect any material evidence to prove that defacto complainant has applied for bank loan for house construction and for that purpose income

certificate was required. Thus the said facts and circumstances, this Court does not find any reason to interfere the finding of the trial Court.

12. In the result, the criminal appeal is dismissed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

1. The Special Judge/ Chief Judicial Magistrate
   Cuddalore, Cuddalore District.

2. The Section officer
   Criminal Section, High Court, Madars.

+1 CC to Dr. R. Sampathkumar, advocate sr 64.

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KGK(CO)
SP(14/02/2018)