

BAIL SLIP

The Appellant /Accused was directed to be released on bail in and by the Order of this Court dated 16/06/2008 made in M.P.No. 1 of 2008 in CrI.A.No. 413 of 2008 on the file of the High Court Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2017

DELIVERED ON : 09.11.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.413 of 2008

S.C.Jain

... Appellant / Accused

Vs.

State rep. by
Deputy Superintendent of Police,
CBI/ACB/Chennai
(R.C.No.21/A/2003

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the Judgment dated 28.05.2008 passed in C.C.No.7 of 2004 by the learned Principal Special Judge for CBI Cases, Chennai.

For Appellant :: Mr.S.Ashok kumar Senior Counsel for
M/s. K.Shanker.

For Respondent :: M/s.K.Srinivasan Special Public Prosecutor
For CBI cases.

JUDGMENT

The above Criminal Appeal is filed u/s 374 of Cr.P.C. 1973 praying to set aside the conviction and sentences imposed by the learned Principal Special Judge, for CBI Cases, Chennai, made in Sessions Case No.7 of 2004 dated 28-05-2008 against the appellant/accused.

1.The case of the prosecution:

(a) The witness PW.2 is doing contract work under the name and style of M/s Banumathi Construction (P) Ltd and he is doing contract work in the military engineering service at Arokkonam and Chennai from 1981 onwards. While so contract to repair the doors in the toilets and the quarters at Arokkonam base was given to him for a sum of Rs.10 Lakhs as per the agreement entered into between PW-2 and the executive engineer, Arokkonam. Then P.W.2 commenced the contract work on 14-01-2003 and completed the same on 25-03-2003. In respect of the running bill for the above said work sum of about Rs.9,00,000/- was paid then and there. PW-9, the Junior Engineer (Civil) in the office of the Garrison Engineer, NAS, Arokkonam had inspected the work performed by PW-2 and reported about the satisfactory works to Asst.Garrison Engineer. The final bill Ex.P.3 for a sum of Rs.1,17,598 was submitted by PW2 for the entire balance amount due to him and the same was verified by PW-12 regarding the correctness of work executed by PW-2 and signed and forwarded the bill to E8 section office. PW.5, Jr.Engineer in the office of the Garrison Engineer, Arokkonam perused the said bill and technically checked bill for the correctness and she signed the same and forwarded to PW-11, Executive Engineer QS & C. The final bill was returned on 16-04-2003 for compliance of certain observations. On 16-04-2003 itself the CWE/appellant herein directed PW-11 to carry out the site check of the work and sent a letter in this regard to Garission Engineer (M)NAS. The site was checked on 30-04-2003 by PW-11, the bill was resubmitted to CWE/appellant on 05-05-2003 and the same was received by the said office on 06-05-2003. The final bill was processed on 07-05-2003 and put up to the CWE the appellant for his approval on the same day at about 11.30 hours.

(b) PW-2 met the appellant on 07-05-2003 at 10.00 a.m in the office of CWE and asked about the bill payment for which the appellant demanded a sum of Rs.10,000/- for clearing the bill for which PW-2 was not willing to pay the amount as demanded by the appellant. The appellant demanded a sum of Rs.8,500/- for clearing the final bill and asked PW-2 to meet him in the office. PW-2 was not willing to pay the amount demanded by the appellant, he lodged a complaint Ex.P.4 to SB/CBI and PW-2 was directed to meet PW-4 the inspector of Police, CBI (trap laying officer) and PW-2 contacted PW-4 and narrated the details for which PW-4 arranged PW-3 and PW6 as witnesses and after observing all the formalities of registration of FIR, preparation of Phonopthaline Sodium Carbonate Solution and a sum of Rs.8,500/- (17 notes of Rs.500/- denomination) was in a cover and put inside pocket of PW-2 and thereafter PW-2,3,4 and 6 and other trap team members went into the office of CWE and PW-2 alone went into the room of the appellant at 2.p.m on 07-05-2003. At that time, the appellant demanded the amount from PW-2. Immediately PW-2 has taken the cover kept in the pocket and handed over the same to the appellant and the appellant received

the same and kept the same in his pant pocket and PW-2 came out of the office and gave pre-arranged signal and then PW-3,4 ,6 and others rushed to the office room of the appellant. They shown the identity cards and trap laying test was conducted by asking the appellant to dip his hands into the solution and after exchange of pant, the pant also soaked in the solution and the solution turned into Pink and Mahazar was prepared in presence of PW3 and 6. Other formalities also observed in respect of the same test and search was conducted at the office and residential premises of the appellant. On the same day appellant was arrested and released on the same day. PW-13 took investigation and completed the same and after obtaining sanction order from PW-1, filed final report against the appellant.

2. On the other hand, the case of the appellant is that he did not demand any amount from PW-2 on any occasion and PW-2 did not meet him in the office at 10.30 a.m on 7.5.2003; the appellant was not at all in the office on 07-05-2003 at about 10.30am as he was attending a meeting in his Head Quarters office and PW-2 did not discuss with the appellant anything regarding the payment of final bill on 7-5-2003 at 2.00pm and PW-2 just came in causal manner and left the cover in the office table of the appellant and thereafter the appellant took the cover in his right hand and followed PW-2 for the purpose of handing over the cover to PW-2, in the mean time PW-4 along with trap team members came and asked the appellant to keep the cover in his pant pocket and accordingly he put the cover in his pant pocket. He was not aware of the currency notes kept in the cover MO-2. Thus, the appellant/accused totally denied any demand of bribe by him as alleged by the Prosecution.

3. After completion of investigation, the police laid final report Under Section 7, 13(2) r/w 13 (1)(d) of Prevention of Corruption Act 1988.

4.The learned Principal Special Judge, for CBI Cases, Chennai, took it on file and framed charges against the accused U/s 7 and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act 1988 and the same was read over and explained to the appellant/accused and on questioning the accused, pleaded total innocence and claimed to be tried. Accordingly, the trial was conducted.

5. On the side of Prosecution, PW1 to PW13 were examined, Ex.P1 to P31 and M.O.1 to M.O.6 were marked and on the side of the appellant/accused no witness was examined and Ex.D1 to D23 were marked. On considering the materials on record, the learned trial Judge in its judgment dated 28-05-2008 found the Appellant guilty for the offences U/s 7 and 13(2) r/w 13 (1)(d)

of Prevention of Corruption Act 1988 and convicted and sentenced to undergo RI for 6 months and to pay a fine of Rs.1,000/- in default to undergo 1 month RI for the offence Under Section U/s 7 of Prevention of Corruption Act 1988 and to undergo 1 year RI and to pay a fine of Rs.2,000/- in default to undergo 3 months RI for the offences under Section U/s 13(2) r/w 13 (1)(d) of Prevention of Corruption Act 1988 and both the sentences are to be run concurrently and set off is allowed U/s 428 of Cr.P.C

6. Aggrieved over the Judgment of conviction and sentences imposed against the appellant, he preferred this appeal.

7.1. The learned Counsel for the Appellant submits that the trial court failed to appreciate the evidence of PW-2 which clearly shows that he is a motivated witness and his intention in preparing this complaint is to sail smooth to attain another slab in his carrier as higher group contractor by any means and failed to appreciate the contention of the appellant that he was in a Meeting with the Coast Guard's Head Quarter as stated by him in 313 Cr.P.C written statement. The trial court failed to see PW-5, 8 and 11 had categorically stated that CWE/ the appellant/accused has nothing to do with the approval of the final bills and the appellant has got no power to stop the final bills after the same has been approved by the Executive Engineer. The trial court failed to see that Ex.P22, 24 and 25 were manipulated to favour the prosecution side and were accepted by PW-8 and 9 and the trial court had failed to see that PW-2 had been given adverse remarks for his work by the appellant on various occasions and this has made him to wreak vengeance against the appellant. The trial court also failed to appreciate the fact that PW-2 was in a dire state to remove the appellant from the place and to bring a pliable officer and the positive evidence in the cross examination of PW-2 by the defense to show that he had given the complaint against the appellant because any further adverse remarks from the CWE/appellant would jeopardize his chances for becoming a "D" Grade contractor who are entitled to handle projects worth Rs.20,000/- from the existing grade-E which he is entitled to handle project worth Rs.10,000/- The trial court ought to have used the same yardsticks to reject the evidence of PW-2 as that of the evidence of PW-3 and 6 which was rejected by the trial court. The possession of trap money by the appellant is rebutted by the defense on preponderance of probability and trial court has failed to see the material contradictions and flaws from the beginning on the side of the prosecution. More over PW-5 in her cross examination deposed that final bills would never be placed for the perusal or approval of the accused. PW-4 Trap laying officer arranged for the independent witnesses even before registration of the FIR, thus playing into

the hand of the Complainant, who was raving to fix the accused in order to wreak vengeance since he is strict and honest officer, the extent of the cover-up by both the star witness and the prosecution agency.

7.2. It is further argued that PW-4 immediately registered a case against the accused for an offence Under Section 7 of the Prevention of Corruption Act without even verifying the antecedents of the accused or the complainant and without perusing any records, fixed up the time for laying of the trap within 1 hour and it clearly shows the vengeance of the PW-2.

7.3. Further it is argued that before registering a case that too in the cases of Prevention of Corruption Act, it is the duty of the Trap Laying Officer/PW-4 to make a preliminary investigation on the offence and then registration of the case to be resorted to. PW-4 has not made any preliminary enquiry before registering the case. He also not deposed any evidence that he has conducted the preliminary enquiry in respect of antecedents of the appellant/accused and also conduct of the complainant/PW-2.

7.4. It is further argued on the side of the appellant that PW-2 had deposed that on 7-5-2003 he met the appellant and at that time, the accused demanded Rs.10,000/- for approval of final bill, since he has not having such amount, he informed the accused that he will pay Rs.8,500/- and the appellant asked P.W.2 to meet him by 2.00 pm with cash. However, in his complaint, P.W.2 has stated that the appellant demanded Rs.8,500/- only. Further, as P.W.2 was not willing to pay bribe, he went to his office, typed the complaint and reached the respondent office by 11.45 a.m, which is unbelievable one. The appellant contends that he has not committed the alleged offence and he was falsely implicated and the appeal may be allowed; conviction and sentences imposed by the trial court is to be set-aside the appellant is to be acquitted.

8. Per contra, the learned Special Public Prosecutor would argue that the appellant was trapped immediately after demand made by the appellant and a sum of Rs.8,500/- was received by him from PW-2 on demand and the possession of the same had been accepted by the appellant but would say that it was left on the table that was taken by the appellant to hand over to PW-2. But the theory of the appellant has not been rebutted and his version cannot be believed and the trial court has elaborately discussed in this aspect and came to the correct conclusion. Further more, there was no enmity prevailing between the appellant and PW-2 and nothing is warranted for PW-2 to falsely implicate the appellant in this case. In fact, the appellant demanded illegal gratification and accepted the same and the evidence of PW-2 is sufficient to prove the offense alleged against the appellant beyond reasonable doubt with his

cogent, convincing and impeachable evidence. The appellant, though has come forward to say that he was attending the meeting with his superiors at the relevant point of time at 10.30 am, he has not produced any record of the Minutes to show that there was meeting and he was attending the meeting which would clearly establish the trust worthy evidence of PW-2 and prove the offences against the appellant. Further PW-11 has categorically deposed that the appellant was to approve the final bill. In these circumstances, the prosecution has proved the guilt of the appellant beyond reasonable doubt and the trial court has elaborately discussed and came to correct conclusion and there is no infirmity in the judgment passed by the trial court and the appeal may be dismissed confirming the conviction and sentences imposed by the trial court.

9. Both side arguments heard.

Now Points for consideration in this appeal is

1. Whether the charges framed against the appellant is proved beyond reasonable doubt

2. Whether the conviction and sentences imposed against Appellant is legally sustainable?

10. It is seen that the trial court disbelieved the evidence of PW3 and PW6 who are the trap witnesses accompanied with PW-2 and PW-4 and other team members, but believed the solitary evidence of PW-2 in respect of demand of illegal gratification other than legal remuneration and acceptance of Rs.8,500/- and convicted and sentenced the appellant. No doubt, the trial court has discarded the evidence of PW-3 and 6 on the ground that they are the witnesses for the CBI, four or five times prior to the present case and also one case subsequent to the registration of this case and the same was originally denied but showing the certified copy of Ex.D1 to Ex.D12 and Ex.D14 to Ex.D18. Evidence of PW-7 also disbelieved by the trial court on the ground that though PW-7 is the brother of PW-2 in the course of investigation he has not disclosed his identity as his brother of PW-2. PW-7 is also the contractor of the Military Engineering Service. He was called upon to speak about the demand of illegal gratification from him by the appellant but no complaint was lodged.

11. It is admitted fact that running bill of PW-2 for the above contract work up to Rs.9 Lakhs, were passed then and there and nothing was stated that the appellant demanded any illegal gratification for the same and no other previous such allegation is made against the appellant on any occasion except in the evidence of PW-7 who is none other than the brother of PW-2 and the said relationship has been suppressed in the statement of PW-7 given to the investigation officer. Further there is no proof for the demand of illegal gratification alleged by PW-7

except his own evidence. As such, it is to be seen whether PW-7 is examined as witness suppressing her relationship with PW-2 only due to collusion between PW-2 and 7 so as to implicate the appellant in the alleged occurrence.

12. While as per the evidence on record, the appellant has not made demand of illegal gratification on any earlier occasions, that too, from PW-2 who is the contractor, doing contract work in the Military Engineering Service from 1981 onwards, for the first time, it is alleged that the accused demanded a sum of Rs.10,000/- initially and as PW-2 refused to pay the said amount, the demand was reduced to Rs.8,500/-. However, no such specific allegation is made in the complaint Ex.P.4 by PW-2 that originally, the accused demanded Rs.10,000/- and subsequently reduced to Rs.8,500/-. On perusal of evidence of PW-2 he has stated in his cross examination that he was E-Grade contractor and for such E-Grade contractor, contract work up to Rs.10 Lakhs would be allotted and for D-Grade contractors, works worth above Rs.10 Lakhs and below Rs.20 lakhs works would be allotted. In order to recognize and promote the E-Grade contractor to D-Grade contractor, the quality of earlier works done by the E-Grade contractor would be considered. Further P.W.2 deposed that in the year 2002-2003 he performed the contract work of maintenance of building and to form a ground for Basket Ball in the Navy office and while the above two works were going on, the appellant had shown the deficiency of work then and there. Apart from that Ex.P.22 was marked through PW-10 during his cross examination which is the letter dated 07-05-2003 given by PW-2 to the Garrison Engineer Maintenance's NAS Arakkonam, copy to Chief Engineer Navy Visakapattinam and CWE Navy Chennai, in which it is stated, "it was brought to our notice from the letter from CWE Office, Navy, Chennai that we have used 30mm thick shutter instead of 25mm as per approved sample this has been clearly mentioned in Mr.S.K.Deota's letter No.87261/1775/E8 dated 07-05-2003 due to this problem the payment that was to be made on 31st March has not yet been made to us. For the extra 5mm thickness I have signed under protest; in our final bill. Hence we request you to make plus D.O that has to be made without further delay. On that basis, Ex.P.23 was sent by CWE department to Garrison Engineer and Ex.P.25 was sent by Garrison Engineer to AAOGE(M)NAS Arakkonam. It is submitted by the learned counsel for the appellant that Ex.P.22,24 and 25 were manipulated to favour the prosecution side. As far as this aspect is concerned, Ex.P.22 was sent by PW-2 on the same date of the alleged trap which was made against the appellant and Ex.P.23 to 25 were made subsequent to the alleged date of occurrence based on Ex.P.22. From the above aspects, the arguments of the appellant counsel cannot be brushed aside as Ex.P.22 to 25 were not made on the date of occurrence, but subsequent thereof. Further as per the evidence of PW-2 itself,

the appellant had then and there shown the deficiency of the work done by PW-2 and though he has stated that he rectified the same it cannot be ruled out that PW-2 has no motive against the appellant because in order to get upgradation from E-Grade to D-Grade, the performance of work allotted should be as per the specification without any defect and the appellant then and there had shown the defects committed by PW-2. Further the final bill was not approved immediately and some defects were noted and returned to PW-8 for rectification of the defects noted and only after rectification the bill was sent to PW-11 then to CWE/the appellant office for the purpose of approval as stated by PW-11 or forwarding the same as stated by PW-5 and further the final bill was produced before the appellant only at 11.30 am on 7.5.2003 only and according to PW-2 he visited the office of the appellant at 10.00 a.m and met the appellant at 10.30 a.m ie before the final bill reached the appellant. In these circumstances, it is doubtful whether PW-2 went to the office of the appellant at 10.00 a.m on 7.5.2003. The above circumstances would go to show that in order to create fear in the minds of other officers or staff concerned to pass his bill without return or making any remarks and to pass the bills immediately, PW-2 has come forward to file a complaint against the appellant and that is why the trap witnesses PW-3 and 6 though accompanied with the trap team did not enter into the room of the appellant. In these circumstances, it is most unsafe to place reliance on the sole testimony of PW-2.

13. In this case, though PW-3 and 6 were the trap witnesses to accompany PW-2 for the purpose of witnessing the trapping. PW-3 and 6 had not entered the room of the appellant which cannot be seen from the outside. It is stated by PW-2 that PW-6 was with PW-4 and PW-3 who accompanied PW-2 but did not enter the room of the appellant but he was standing outside the room of the appellant. PW-2's version at the time of trapping, the office assistant of the appellant was not available in front of the room of the appellant. PW-2 has not stated why PW-3 and 6 did not enter into the room of the appellant. It is the duty of PW-2 to explain about the same, but no explanation is offered by PW-2 regarding the non entrance of PW-3 and PW-6, the trap witnesses even though the office assistant was not available at the time of alleged relevant time of trapping. It is to say that it is a protected area and nobody will be allowed without permission. But there is no evidence that the trap witnesses were prevented from entering into the premises of Military Area. But having entered into the Area up to outside room of the appellant, they did not enter into the room of the appellant creates doubt. In these circumstances, the sole testimony of PW-2 alone cannot be relied on for which alleged trap corroboration is required. The prosecution has to establish beyond doubt that the appellant

demanded illegal gratification other than legal remuneration for the purpose of approving the bill and then only, the question of presumption against the appellant would arise and then rebuttal by the appellant would arise. Here, except PW-2's evidence regarding demand of illegal gratification and acceptance of the same, no other corroboration is available and the evidence of PW-2 alone cannot be relied upon, as no allegation against the appellant from 1981 onwards and that is the only occasion such an allegation was made against the appellant and there was a motive for PW-2 against the appellant that the appellant had shown the defect in the work performed by PW-2. The presumption against the appellant cannot come into play and so question of rebuttal would arise for the appellant to disprove the allegations made against him. Of course, appellant, though had made a written statement during 313 Cr.P.C examination that he was not available in his office at 10.30 a.m on 7-5-2003 and he was attending a meeting in nearby office Head Quarters, no proof is filed. But that itself would not raise such presumption against the appellant. Whatever be the statements made in the 313 Cr.P.C, it cannot be used against him unless the evidence of prosecution establishes the legal presumption against him. As discussed above, there cannot be a legal presumption against the appellant, though the appellant has not proved that he was attending the meeting in head quarters, it cannot be taken against him.

14. Further as far as recovery of Rs.8,500/- from the appellant from the right hand pant pocket and the positive result of phenolphthalein test is concerned, the appellant has stated that PW-2 placed the cover in his table and in order to hand over the same to PW-2 he took the same and came out of his room; at that time PW-4 and his team members caught him and asked him to put the cover in his right hand pant pocket and thereby he put the same in his right hand pocket and subsequently the same was recovered from him. In this aspect, the trial court observed that as the appellant was Officer cadre, he would have called for his office assistant or staff to take and hand over the same. As far as this aspect is concerned, as per the evidence of PW-2 at the time of entering the room of the appellant, office assistant was not available at the entrance of the office room of the appellant and that situation is to be taken into consideration and also it depends upon the mentality of the person concerned. So, in the absence of any corroborative evidence to the evidence of PW-2, the allegation that the appellant demanded and received Rs.8,500/- as illegal gratification, cannot be sustained, just because of the recovery of the same from the appellant. Further it is pertinent to note that though the office of the appellant as well as his house was searched by PW-4, no incriminating material against him is recovered. This aspect is also to be taken into consideration.

15. PW-2 deposed that he approached the appellant for the first time on 07-05-2003 at 10.20 a.m and asked to clear the bill; at that time, the appellant demanded Rs.10,000/- as bribe. But PW-11 deposed that bill was sent to the appellant only by 11.30 am. Hence it clearly shows that at 10.20 am., no bill was pending before him. The same also clearly shows that at the time of alleged demand, no paper/bill pending before the appellant. Hence the demand of bribe itself is doubtful.

16. The paragraph 47(2) in the Manual of the Directorate of Vigilance and Anti-Corruption says, "Immediately after recovery and seizure of the bribe money or article, the accused officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the code of criminal procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the accused officer recorded".

17. In this connection, it is useful to rely upon the decision of this court in the case of P.Palraj Vs State 2012 (3) CDJ 619, wherein, this court held that "failure on the part of the Trap Laying Officer to record the statement from the accused immediately after the arrest would vitiate the entire proceedings." In this case, PW-4 has not deposed about the recording of the statement of the accused immediately after his arrest and nothing is whispered about the same. By applying the above ratio to the case in our hand, this court is of the considered view that the order of conviction passed against the appellant is not sustainable.

18. From the above arguments, this court finds that the entire statement and evidence of PW-2 about the appellant/accused alleging demand of money for processing the final bill, has been proved to be false. The prevaricating statements of the witnesses PWs 3, 4, 5, 8 and 11 is highly doubtful and improbable.

19. From the foregoing discussion, I am of the considered view that the finding of the trial court which is completely based on accepting the evidence of PW-2 alone regarding demand and acceptance of bribe is not correct and the same would warrant interference and the appeal is to be allowed and conviction and sentences imposed by the trial court is to be set-aside and the appellant is to be acquitted.

20. In the result, the Criminal Appeal is allowed. The conviction and sentences imposed by the trial court is set-aside and appellant is acquitted of all charges framed against him.

The fine amount paid by the appellant is ordered to be refunded to the appellant and the bail bond executed by the appellant shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Principal Special Judge for CBI Cases,
Chennai.
- 2.Deputy Superintendent of Police,
CBI/ACB/Chennai
(R.C.No.21/A/2003
- 3.The Special Public Prosecutor,
for CBI Cases,
High court, Madras.

+1cc to Mr.K.Srinivasan, Special Public Prosecutor for CBI
cases, S.R.No. 76624

Criminal Appeal No.413 of 2008

SSD(CO)
GN(19/12/2018)

सत्यमेव जयते

WEB COPY