IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2018
Pronounced on : 19.06.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.560 of 2017

State represented by:
The Public Prosecutor,
High Court, Madras 600 104,
(Vigilance and Anti Corruption,
Salem)
(Crime No.7/AC/2011) .. Appellant/Complainant

/versus/

V.Srinivasan, M/A49/2012
S/o Vasudevan,
Formerly Foreman,
O/o Assistant Engineer(O&M),
TNEB, Kadayampatti II,
Deevattipatti(Po)
Omalur Taluk,
Salem District. .. Respondent/Accused

Criminal Appeal filed under Section 378(1)(b) Cr.P.C., against the judgment dated 28.02.2017 in Spl.C.C.No.59 of 2014 by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem and prays that this Honourable Court may be pleased to set aside the judgment of the trial Court and convict the respondent/accused as charged.

For Appellant :Mr.K.Prabakar, APP

For Respondent :Mr.B.Kumar,Senior Counsel for
M/s P.Ezhil Nilavan

J U D G M E N T

This appeal is against the order of acquittal made in C.C.No.59 of 2014 on the file of the Special Court for trial of cases under Prevention of Corruption Act, 1988 at Salem, dated 28.02.2017.

2. Brief facts leading to the appeal is as follows:

Thiru.Venkatachalam a resident of Deevattipatti, Kadayampatti near Mariamman Koil in Devattipatti village, Omalur Taluk, Salem District owned 25 cents of land and he permitted his grandson Thiru.S.Venkatesh to erect a coir manufacturing unit in the said land. To get 3 phase electricity service connection, Thriu.Venkatachalam gave application to the accused Thiru.V.Srinivasan [Foreman] in the office of Assistant Engineer, TANGEDCO, Kadayampatti-II, Deevattipatti, Salem District. On receipt of the application, Thiru.V.Srinivasan along with the Commercial Inspector Thiru.Jayaraman inspected the coir manufacturing unit and instructed the complainant to built 5 feet wall for fixing the electricity measuring meter. As per the direction of the accused, Thiru.Venkatesh built wall and informed to the accused Thiru.V.Srinivasan on 03.06.2011 that he has made the wall ready for fixing the meter.

3. On the direction of the accused Thiru.V.Srinivasan, [Foreman], the Commercial Inspector Thiru.Jayaraman, inspected the Unit on the same day and instructed the complainant to raise the height of the wall with two more rows of bricks. After complying the same, Thiru.S.Venkatesh met Thiru.V.Srinivasan and reported compliance. Thiru.S.Venkatesh was told to deposit a sum of Rs.6,200/- for 3 phase connection and Rs.50/- towards application fees. Further, Thiru.V.Srinivasan demanded a sum of Rs.4,000/- as bribe for providing electricity service connection. After bargaining, Thiru.V.Srinivasan reduced his demand to Rs.2,000/-. On 04.06.2011 Thiru.S.Venkatesh met Thiru.V.Srinivasan at his office and gave Rs.6,250/- for which a receipt was issued. When Thiru.V.Srinivasan demanded the bribe of Rs.2,000/-, Thiru.S.Venkatesh told him that he will pay the bribe amount on the day prior to the day the electricity connection is given. On 17.06.2011 Thiru.S.Venkatesh met Thiru.V.Srinivasan and enquired about the electricity service connection. It was informed by Thiru.V.Srinivasan that the meter is not available, on receipt of the meter, connection will be provided and insisted the complainant Thiru.S.Venkatesh to give the bribe amount to him.

4. On 20.06.2011, again, Thiru.S.Venkatesh met Thiru.V.Srinivasan at his office and enquired about the status of his application. Thiru.V.Srinivasan assured that the meter will be ready within a day or two and instructed the complainant Thiru.S.Venkatesh to give the bribe amount of Rs.2000/- on the next day. Thiru.S.Venkatesh was not inclined to give bribe for getting electricity service connection, therefore, went to the Vigilance and Anti-Corruption Office at Salem on 20.06.2011 at about 16.30 hours and made oral complaint with the Inspector of Police. Thiru.N.Rangarajan, Inspector of Police registered a case against Thiru.V.Srinivasan for the offence under Section 7

of the Prevention of Corruption Act, 1988 and organised the trap.

5. On 21.06.2011 two official witnesses namely (i) Thiru.P.Murugesan, P.G.Assistant, Govt.Boys Higher Secondary School, Sankagiri, Salem District and (ii) Thiru.K.Babu, Block Health Supervisor, Government Primary Health Centre, Malliyakarai, Attur, Salem District were asked to be present at Vigilance and Anti Corruption Office at Salem. In the presence of these two official witnesses, Thiru.N.Rangarajan demonstrated the test of Sodium Carbonate with phenolphthalein and explained about the significance of phenolphthalein test to the complainant and the official witnesses. The bribe money of Rs.2,000/- i.e one 500/- rupees urrency note and fifteen 100/- rupees currency notes produced by the complainant Thiru.S.Venkatesh was smeared with phenolphthalein powder and entrusted to the complainant. Entrustment Mahazar was prepared in the presence of witnesses and signed by them.

6. At about 09.30 hours the complainant Thiru.S.Venkatesh and the accompanying witness Thiru.P.Murugesan reached the office of the Assistant Engineer (O&M) Kadayampatti-II, Deevattipatti met the accused Thiru.V.Srinivasan [Foreman] at his office. On seeing Thiru.S.Venkatesh, the accused Thiru.V.Srinivasan reiterated the earlier demand and accepted Rs.2,000/- from Thiru.S.Venkatesh in the presence of Thiru.P.Murugesan and kept the money in his left side outer shirt pocket. Thereafter, Thiru.S.Venkatesh and Thiru.P.Murugesan came out of the office and gave pre-arranged signal to the trap team, which was waiting outside the Assistant Engineer office. In the presence of other official witness Thiru.K.Babu, Thiru.V.Srinivasan was asked to dip his right hand and left hand in the Sodium Carbonate Solution prepared separately. The colour of the solution turned into pink indicating the presence of phenolphthalein. Thereafter, the tainted money of Rs.2000/- was recovered from the accused Thiru. V. Srinivasan and he was arrested for demand and acceptance of illegal gratification as motive to provide 3 phase electricity service connection to Thiru.S.Venkatesh. Recovery Mahazar has been prepared.

7. The file pertaining to the application of Thiru.Venkatachalam grandfather of Thiru.S.Venkatesh was also recovered. Thereafter, the Investigation was entrusted to one Thiru.L.Selvakumar, Inspector of Police(V&AC), Salem had recorded the statement of the witnesses and collected chemical analysis report and after obtaining sanction to prosecute the accused Thiru.V.Srinivasan from the Superintending Engineer, Mettur Electricity Division, who is the authority competent to remove the accused from service, final report was filed before

the Special Court for the cases under Prevention of Corruption Act, Salem.

8. The trial Court, after considering the materials placed by the prosecution, had framed charge for the offence under Section 7 of the Prevention of Corruption Act, 1988 for demand and acceptance of Rs.2,000/- from the complainant Thiru.S.Venkatesh on 21.06.2011 between 09.40 to 09.55 a.m., at the office of the Assistant Engineer, Kadayampatti-II, Salem District and for misconduct of abusing his official position to obtain pecuniary advance by corrupt or illegal means punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988.

9. To prove the charges, the prosecution has examined 12 witnesses, marked 27 exhibits and 5 material objects. The trial Court, after considering the evidence, acquitted the accused holding that the accused has failed to prove the case beyond reasonable doubt. Aggrieved by the order of the acquittal, the present appeal is filed by the State.

10. Learned Additional Public Prosecutor representing the appellant/State would submit that, the trial Court has wrongly held that the evidence of the defacto complainant examined as PW-2 is not corroborated by any other independent witness and his evidence cannot be relied upon to hold that there was demand of gratification made by the respondent/accused as found in the complaint marked as Ex.P2. On the contrary, the trial Court ought to have held that the PW-2 in his chief examination has deposed about the initial demand of gratification made by the accused and he has turned hostile only during the cross examination, which took place nearly 6 months after the witness was examined in chief.

11. The trial Court ought not to have given credence to the version of PW-2 made during the cross examination that he paid the amount to the accused towards transport expense and not as illegal gratification. PW-2 supported the case of the prosecution and the contended of the complaint Ex.P-2 during the chief examination conducted on 11.09.2014. He was won over by the accused and that is the reason when he was cross examined after 6 months after examination in chief had turned turtle. Besides PW-2, the evidence of PW-3 who had witnessed the transaction of demand and receipt of the tainted money by the accused, has also not been accepted by the trial Court for the reason best known. The prosecution has proved the case of demand of illegal gratification through PW-2, his complaint Ex.P2 and through the corroboration of the accompanying official witness PW-3, who had witnessed the receipt of tainted money by the accused, coupled with the recovery of the money by the Trap

Laying Officer immediately after the transaction, has not been given due consideration by the Court below. Even as per the evidence of PW-2, during the cross examination, Rs.2,000/- was paid to the accused towards the transport charges and he has received it and kept it in his shirt pocket. This amount, by no stretch of imagination, could be termed as legal remuneration. It is illegal gratification received by the accused as a motive or reward for doing an official favour to PW-2. Therefore, the ingredients of Section 7 of Prevention of Corruption Act, 1988 squarely attracted in this case.

12. Having proved the charge of demand and receipt of gratification, the trial Court ought to have presumed against the accused under Section 20 of the Prevention of Corruption Act, 1988 and ought to have convicted. The Court below failed to do so and had erroneously extended the benefit of doubt, when there is no reasonable doubt in the case of the prosecution. Therefore, the order of the trial Court is liable to be set aside.

13. Per contra, the learned Senior Counsel appearing for the respondent/accused would submit that the judgment of the trial Court is well fortified by reasoning and material facts. The complaint Ex.P2 alleges that the first demand of Rs.4,000/-, later reduced to Rs.2,000/- after negotiation was made by the accused in the presence of PW-6 Thiru.Jayaraman. Neither in the previous statement of PW-6 nor in the deposition of PW-6 there is any whisper about the demand of illegal gratification by the accused. Thus, the very basis of the complaint Ex.P2 is highly doubtful. Thiru.G.Venkatachalam, who was examined as PW-8 has nowhere mentioned about the demand of illegal gratification made by the accused for providing 3 phase service connection to his coir unit. Even at the time of trap and seizure of money, the accused had explained, why the money was given to him by the complainant . The said explanation has been affirmed by the complainant in the cross examination. The money thrusted on him to meet out the transport expenditure cannot be considered as illegal gratification. Therefore, the trial Court reasoning which is plausible cannot be interfered in the appeal.

14. Point for consideration:

Whether the trail Court erred in discarding the evidence of PW-2 and whether the finding of the trial Court is perverse or against law?

15. Ex.P2 is the complaint given by Thiru.S.Venkatesh, which has set the criminal law in to motion. In his complaint, PW-2 had stated that on 03.06.2011 the accused told the Commercial Inspector[PW-6] to visit the shed and measure the wall and

report. Accordingly, Thiru.Jayaraman[PW-6] measured the wall and instructed PW-2 to raise the height of the wall by putting two more rows of bricks and came back and reported the same about this to the accused Thiru.V.Srinivasan. At that point of time, there was demand of illegal gratification of Rs.4,000/- by the accused and after bargaining, the same was settled at Rs.8,250/- inclusive of deposit Rs.6,200/- and application fee of Rs.50/-. In the complaint, it is also stated about the second demand on 04.06.2011, the third demand on 17.06.2011 and the 4th demand on 20.06.2011. In the chief examination he has almost reiterated what he has said in his complaint regarding the demands made by the accused prior to the trap proceedings. The trial Court taking note of the U turn taken by this witness in the cross examination denying the allegation of demand made by the accused on all these occasions, has considered this witness as wholly unreliable witness. To take portion of deposition of PW-2, which is in support of prosecution, the said portion must be well corroborated by the other witnesses. As far as this case is concerned, for the alleged demands made prior to the trap, there is no other witness except the sole evidence of PW-2, who has become a tainted witness due to his hostility during the cross examination.

16. It is contended by the leaned Special Public Prosecutor appearing for the State that this witness was examined in chief on 11.09.2014. He has supported the case of the prosecution in toto and reiterated his complaint Ex.P2 and the demand and receipt of illegal gratification by the accused on 21.06.2011 in the presence of PW-3. The witness was not cross examined by the accused for several months and after, he was won over by the accused, cross examine was done on 17.04.2015. Therefore, the dates, on which the witness was examined in chief and cross examined is very vital. Being a clever witness supported the case of the prosecution in chief and had turned hostile during the course of cross examination conducted, after 6 months, which should be taken adverse to the accused.

17. The learned Senior Counsel appearing for the respondent/accused had produced a chart containing the dates on which the summon was issued to this witness and the date on which he was examined in chief and cross. This chart indicates that PW-2 did not appear before the Court, despite several summons issued to him for his appearance to give evidence. As a last resort, the trial Court has issued warrant for appearance. Only after receipt of warrant PW-2 had appeared and deposed. Along with PW-2, on the same day, two more witnesses were examined on the side of the prosecution. The accused has filed an application to defer the cross examination of PW-2, till the examination of other two witnesses. This application has been allowed by the trial Court and thereafter, when summon was

issued to PW-2 to submit himself for cross examination on 27.01.2015, PW-2 and PW-3 were present but the accused has filed an application for adjournment and the trial was adjourned to 18.02.2015. On that day i.e on 18.02.2015 and on 27.02.2015 the witness was not present. Only on 17.04.2015 PW-2 was present and was cross examined. Therefore, from the dates and events stated above, there is no material to infer that the examination of the witness was deliberately delayed by the accused and PW-2 had turned hostile in the course of cross examination, since he was won over by the accused. Leave alone the evidence available regarding the previous demand, the fact remains that on the day of trap i.e on 21.06.2011 PW-2 had given Rs.2000/- to the accused and the accused has received the same and kept in his pocket, this is not denied by the accused. The reason and explanation given by the accused is that the money was given to him by PW-2 to meet out the transport expenses.

18. In the seizure, a memo which has been prepared contemporaneously at the time of trap the explanation for the receipt of the money is extracted. It is seen that the accused had received the money to meet out the transport expenses. When the trap laying officer has enquired the accused why he has received the money from the complainant he has stated that the Assistant Engineer of Kadayamapatti, Tamil Nadu Electricity Board office is also in charge of Thammapatti office and therefore, the accused was asked to deal with the applications for service connection in coordination with the Commercial Inspector Thiru.Jayaraman. Since he has to incur the expense for transport for inspection of the site, he had received the money. The Court below had taken this as a probable explanation and had acquitted the accused extending the benefit of doubt.

19. In the absence of proof for earlier demand and suspicion over the case of the prosecution regarding the purpose of receiving the tainted money from PW-2 the trial Court had accepted the explanation. Though the explanation may not be sufficient enough to believe as true, probability cannot be ruled out. When there are two possible views and the trial Court has taken the view favourable to the accused, merely because the tainted money has been recovered from the accused, the presumption under Section 20 of the Prevention of Corruption Act cannot be drawn. The receipt of Rs.2,000/- to meet out the transport expense may not strictly fall within the meaning of legal remuneration but when there is a possibility of incurring expense during the inspection of the site and moving the material to the site and that has been accepted by the trail Court, this Court is not inclined to interfere with the finding of the trial Court.

20. In the result, this Criminal Appeal is dismissed. The order of acquittal dated 28.02.2017 in Spl.C.C.No.59 of 2014 by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem is hereby confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The Special Judge,
Special Court for trial of Cases under Prevention of Corruption Act,
Salem.

2.The Public Prosecutor, High Court, Madras.

3.The Inspector of Police, V & AC, Salem.

+1cc to Mr. P.Ezhil Nilavan, Advocate, S.R.No.38812

Crl.A.No.560 of 2017

MP(CO)
GSP(05/07/2018)