

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.01.2018

Pronounced on :31.01.2018

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Criminal Appeal No.565 of 2017

State represented by

The Public Prosecutor,

High Court, Madras 600 104,

[Vigilance and Anti-Corruption,

Special Investigation Cell,

Chennai].

(Crime No.13/AC/2008/HQ)

.. Appellant/Complainant

/versus/

G.Chandrasekaran,

Formerly Inspector of Police,

T-12, Poonamallee L & O, P.S.,

Poonamallee, Chennai-56.

.. Respondent/Accused

Criminal Appeal is filed under Section 378 (1)(b) of the Criminal Procedure Code praying to set aside the judgment of acquittal passed in Spl.C.No.6 of 2009, dated 23.12.2016 by the Special Judge and Chief Judicial Magistrate, Tiruvallur and convict the respondent as charged in accordance with law.

For Appellant :Mr.P.Govindarajan, APP(crl.side)

For Respondent :Mr.R.Manimuthu

J U D G M E N T

The State is the appellant herein. The appeal against acquittal is directed against the order of the Special Judge and Chief Judicial Magistrate, Thiruvallur passed in Spl.Case No. 6 of 2009, dated 23.12.2016.

2. The prosecution against the respondent/accused Mr.G.Chandrasekaran, Inspector of Police attached to Poonamallee Police Station was the outcome of investigation based on the complaint (Ex.P-2) dated 17.12.2008 given by one D.Suresh Kumar, S/o Dhanabal Naicker (PW-2). According to the complaint on 07.12.2008, the Inspector Mr.Chandrasekaran/respondent/accused demanded Rs.25,000/- and later, reduced it to Rs.10,000/- as

illegal gratification for doing him a favour, namely, not registering the complaint of one Kanchana lodged against Suresh Kumar under Section 307 IPC, but for lesser offences under Sections 342, 324, 506(ii) IPC and Section 4 of Prevention of Women Harassment Act, the respondent has registered the case, though he could have booked him under Section 307 IPC.

3. In furtherance of the complaint Ex.P-2, Inspector, Mr.J.Vijay Anand (PW-7) registered the complaint and a trap was laid to catch hold of the accused while he receive the bribe money. On 17.12.2008, at about 15.00 to 15.10 hrs at Poonamallee Police Station, the defacto complainant gave the tainted money of Rs.10,000/- to the accused in the presence of Mr.K.Thiyagarajan (PW-3) and the accused received it, counted and kept it in his right side pant pocket. After receiving the pre-arranged signal from PW-2[Mr.D.Sureshkumar], the trap team led by PW-7[Mr.J.Vijay Anand], recovered the tainted money from the accused, after conducting phenolphthalien test.

4. The trial Court, after considering the ocular and documentary evidences placed before it, doubted the veracity of the complaint being lodged after 10 days from the date of demand. Belated complaint without any explanation for delay, contradiction between the evidence of PW-2[Mr.D.Sureshkumar] and PW-3[Mr.K.Thiyagarajan] regarding the reaction of the accused after receiving the money, uncorroborated evidence of PW-2 [Mr.D.Sureshkumar], the explanation given by the accused immediately after the trap attributing motive against PW-2 [Mr.D.Sureshkumar] who was arrested by the accused based on the complaint of Kanchana were the reasons given by the trial Court for holding the prosecution failed to prove the charges levelled against the accused beyond reasonable doubts.

5. Aggrieved by the said order, the appeal has been preferred on the ground that the trial Court ought to have held that once the demand and obtainment is proved, the presumption under Section 20 of the Prevention of Corruption Act, 1988 is attracted. Further, the trial Court has failed to see that though the defacto complainant failed to speak about bargaining and reducing the bribe amount from Rs.25,000/- to Rs.10,000/- during the initial demand of the accused, he also did not speak about the specific amount of demand of the accused on the date of trap also and thereby perfectly corroborated by the shadow witness as both of them did not specifically state the exact amount. So, there exist mutual corroboration and there is no question of doubt about the demand and hence, the conclusion arrived at by the trial Court is not substantiable in law.

6. Further, the trial Court has failed to see that the delay in lodging of a complaint alone cannot be considered as a ground to throw away entire prosecution case. It is also submitted that the delay is condemned because there is a possibility of an innocent person being roped in and only to avoid such an eventuality lodging of a complaint without any lapse of time is expected. But, such a reasoning does not hold good in this case as there is no scope of an innocent person being roped into this case and hence, the mere delay cannot be a ground to throw away the entire prosecution case in to dustbin, if otherwise reliable evidence is available and hence, the decision arrived by the trial Court is not sustainable in law.

7. The trial Court has also failed to see that when all the conditions stipulated in Section 33 of the Indian Evidence Act, is satisfied, PW-2's evidence comes into reckoning and has to be acted upon. It is further submitted that apart from PW-2's evidence, PW-3's evidence is very well corroborated by direct and corroborative evidence of seizure mahazar and other circumstantial evidences and there is no reason to reject the evidence of PW-3 especially when there is nothing on record to show that his evidence is not reliable or incredible in nature. The trial Court failed to see that PW-3 deposed only about the trap laying officer asking the accused to produce the money for which the accused responded by admitting and producing the tainted money from his pant pocket. He did not state anything about trap laying officer offering an opportunity to the accused. On the other hand, the seizure mahazar contain that the accused responded by stating that the defacto complainant lodged a false complaint due to previous enmity but failed to offer any explanation why he received the money. So, the trial Court attempted to compare these two pieces and trying to create a contradiction is a clear case of erroneous appreciation of evidence and hence, it is not sustainable in law.

8. Per contra the learned counsel appearing for the respondent/accused would submit that, there is no perversity in the trial Court order to be interfered in the appeal. The cross examination of the defacto complainant (PW-2) was deferred on petition, permitting the accused to recall him after the examination of decoy witness and trap laying officer. Unfortunately before that objected to cross examination. Therefore, Section 33 of the Evidence Act will no apply to the facts of this case. Further, even if the chief examination of PW-2[Mr.D.Sureshkumar] is taken into consideration, it does not corroborate by PW-3[Mr.K.Thiyagarajan] decoy witness on many facts. The chief examination of PW-2[Mr.D.Sureshkumar] is not

even consonance to his own complaint Ex.P-2. The evidence of DW-1[Mr.Winfred] an independent witness who was present at the Poonamallee Police Station, had deposed that the defacto complainant came and kept the tainted money on the lap of the Inspector and said, "why I alone should go to jail, you will also go to jail". This evidence probablises the explanation of the accused which find place in the mahazar Ex.P-5. Therefore, the appeal deserved to be dismissed.

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

10. The scrutiny of the trial Court order and the evidence would go to show that, the defacto complainant [PW-2] was an accused of offences under Sections 342, 324, 506(ii) IPC and Section 4 of Prevention of Women Harassment Act in Crime No.898 of 2008 of Poonamallee Police Station. Based on the complaint of one Kanchana, the defacto complainant (PW-2) was arrested and remanded to judicial custody on 21/11/2008 by the present respondent. PW-2[Mr.D.Sureshkumar] in his chief examination had deposed that after being released on bail on 26.11.2008, Head Constable Mr.Subbaiah called him over phone and informed him that the Inspector (accused) wanted to meet him, but he did not meet the Inspector as per the advice of his Advocate. Again during the first week of December, he came to know from his neighbouring house owner that a Constable came and he was summoned to police station. In response to that he went to Police Station and at that time the accused scolded him and demanded Rs.25,000/- for not registering case against him under Section 307 IPC.

11. In his deposition, PW-2[Mr.D.Sureshkumar] has not mentioned the date of his meeting with the accused nor his bargain with the accused regarding the quantum of bribe and reduction of demand from Rs.25,000/- to Rs.10,000/-. That apart, his evidence is not corroborated by PW-3[Mr.K.Thiyagarajan] in respect of what the accused said after receiving the bribe of Rs.10,000/-. While PW-2[Mr.D.Sureshkumar] has deposed that the accuse after receiving the bribe money of Rs.10,000/- asked him when he will bring the balance?. Whereas PW-3[Mr.K.Thiyagarajan] has deposed that, after receiving the money, the accused assured the defacto complainant (PW-2) that he will take care. The material contradiction between PW-2[Mr.D.Sureshkumar] and PW-3 [Mr.K.Thiyagarajan] is yet another reason for the trial Court to disbelieve the case of the prosecution.

12. It is now settled preposition of law that, when two views are possible and if the trial Court has taken a view which is in favour of the accused and such view and reasoning is neither perverse nor improbable, the appellate Court need not set aside the order of the trial Court. Therefore, this appeal against acquittal is bound to be dismissed.

13. Accordingly, this Criminal Appeal is dismissed. The order of acquittal passed by the trial Court viz., The Special Judge and Chief Judicial Magistrate, Tiruvallur dated 23.12.2016 in Spl.C.No.6 of 2009, is hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge and Chief Judicial Magistrate, Tiruvallur.
2. The Public Prosecutor, High Court, Madras.

+2cc to Mr.R.Manimuthu, Advocate Sr.No.7632

VD(CO)

sm:15.2.2018

judgment made in
Criminal Appeal No.565 of 2017

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