

BAIL SLIP

The Appellant/Accused namely S.Umaidurai S/o.Chinnapayan be and hereby was directed to be released on bail vide court order dated 19/09/2014 in MP.1/14 in CrI.A. 487/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.03.2018	Pronounced on: 12.04.2018
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.487 of 2014

S.Umaidurai

... Appellant/Accused

/versus/

The State rep. by the Deputy Superintendent of Police,
Vigilance & Anti Corruption Department,
Villupuram.

Crime No.5 of 2008

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 and 382 of Criminal Procedure Code, to set-aside the conviction and sentence passed against the appellant by judgment made in Special Case No.36/2014 on 02.09.2014 on the file of the Special Court [for Prevention of Corruption Cases] Villupuram.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor.

J U D G M E N T

This Criminal Appeal is filed by S.Umaidurai appellant/accused in Special Case No.36 of 2014, dated 02.09.2014 on the file of the learned Special Court for [Prevention of Corruption cases], Villupuram. The appellant was found guilty for offences under Sections 7 and 13(2) r/w13(1)(d) of Prevention of Corruption Act, 1998 and sentenced to undergo one year R.I and fine of Rs.1,000/- for each of the offences in default to undergo S.I for three months.

Brief facts of the case

2. The appellant/accused was working as Village Administrative Officer in Vasudevanur Village, Kallakaurichi Taluk, Villupuram District between 01.12.2006 to 15.10.2008. On 11.10.2008 at about 5.30p.m Saravanan son of Venkatachalam approached the accused/appellant for disability certificate to get Physically Handicapped Pension (PHP). The accused/appellant had demanded initially Rs.2,000/- as illegal gratification to recommend the defacto complainant [Saravanan] for Physically Handicapped Pension Scheme, later he has reduced the demand to Rs.1,500/-.

3. Thiru. Saravanan who was not inclined to give bribe, had gone to the office of Deputy Superintendent of Police, Vigilance and Anti Corruption, Villupuram on 14.10.2008 at about 16.30 hours and given a complaint regarding demand of bribe against the VAO. The complaint was registered and taken up for investigation. A trap team was arranged on 15.10.2008 by the Trap Laying Officer Thiru.E.Venkatesan, Inspector of Police. The demonstration about the significance of phenolphthalein test in the presence of two witnesses namely G.Ashok [PW.3] and T.Rajan was conducted and the bribe money of Rs.1,500/- [one Rs.1000/- and one Rs.500/- currency] smeared with phenolphthalein was entrusted to Saravanan [PW.2]. He was instructed to give the tainted money to the accused only if the demands it.

4. The defacto complainant Thiru. Saravanan [PW.2] along with the witnesses G.Ashokan [PW.3] and T.Rajan [not examined] followed by the trap team went to Chinna Salem on 15.10.2008 at about 1.00pm. Saravanan and Ashokan [PW.3] went to the room of the accused near old bus stand at Chinnasalem. The accused demanded and accepted Rs.1,500/- from Saravanan [PW.2] in the presence of G.Ashokan [PW.3] and kept the money in his shirt pocket. On receiving the pre-arrange signal from the decoys the trap team went to the room of the accused subjected the right-hand of the accused, to phenolphthalein test. The sodium carbonate solution turned into pink and sample of the solution was collected. Thereafter, when Inspector of Police Venkatesan [PW.13] enquired the accused about the money received from PW.2 [Saravanan], the accused took out Rs.500/- from his shirt pocket which is marked as M.O.1 series from. The numbers found in the currencies were compared with the numbers already recorded in the entrustment mahazar which is marked as Ex.P.3. The currency were also subjected to phenolphthalein test and found positive. The shirt pocket was subjected to phenolphthalein test and having found positive to the presence of phenolphthalein, the shirt of the accused was recovered and marked as M.O.4 series.

5. As a follow up of the Trap proceedings, documents relating to the application given by PW.2 for disability Pension Scheme and other connected documents were seized by the prosecution and final report was laid against the appellant for offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption, Act, 1988 for demand and acceptance of Rs.1,500/- from Saravanan on 15.10.2008.

6. To prove the charge, the prosecution has examined 14 witnesses and marked 20 Exhibits and 4 material objects. The trial Court has accepted the case of the prosecution as spoken by its witnesses and documents and held the appellant guilty of the charges tried against him and sentenced him to undergo on year rigorous imprisonment and pay a fine of Rs.500/- for each of the charges.

7. Aggrieved by the conviction and sentence imposed by the trial Court, the present appeal is preferred by the accused/appellant on the ground that the Trial Court has failed to appreciate the evidence properly. The explanation given by the appellant not taken note by the Trial Court. Neither, the sanctioning authority PW.1 [Vanitha] had perused the records placed before her for granting sanction nor the prosecution has placed all the records before the sanctioning authority for perusal, to arrived at appropriate conclusion.

8. The explanation of the appellant that, PW.2[Saravanan] at the instigation of one Manimaran had lodged a false complaint. The appellant was under the impression that the money given by PW.2 is towards part payment of fine amount levied on Manimaran for illicit felling of tree. PW.2 [Saravanan] himself admitted in his deposition that the money used for the trap was given to PW.2 [Saravanan] by Manimaran. Therefore, the prosecution has disowned the evidence of PW.2 [Saravanan] and treated him as hostile. In the light of the above said circumstances, when the defacto complainant himself has turned hostile, the trial court ought not to have accepted the prosecution case to arrive at the conclusion of guilty.

9. The learned Counsel appearing for the appellant would submit that PW.1 [Vanitha] in her evidence has stated that she perused the statement of the witnesses and the statement of the accused along with other documents. The prosecution has screened the said statement of the accused given to the Trap Laying Officer. Immediately, after the trap proceedings. The appellant had explained under what circumstances he received the money from PW.2 [Saravanan]. The non-production of the said statement has prejudiced the appellant and fatal to the prosecution. The propoundance of the probability of his

explanation gets strengthen by non production of the accused statement which was placed before the sanctioning authority.

10. Further, the learned Counsel appearing for the appellant would point out that PW.2 [Saravanan] has stated that initially he met one Sekar on 26.09.2008 and handed over his application. Again on 10.10.2008 at about 5.00 p.m, he met Sekar at Taluk Office, Kallakaurichi, Villupuram District. The said Sekar gave back the application and directed him to met V.A.O who is the appellant herein. After taking the photocopies of the application on 11.10.2008, he met the accused. At that time the accused demanded Rs.2,000/- for arranging disability handicapped Pension Scheme and later reduced the demand of Rs.1,500/-. He also told PW.2 [Saravanan] to met him again after 5 days. Since, PW.2 was not inclined to give bribe, he went to Vigilance and Anti Corruption Department at Villupuram on 14.09.2008 and gave the complainant at about 4.30 pm to Venkatesan, Inspector of Police.

11. In the cross examination, contrary to his evidence in Chief, PW.2 had deposed that he first met the accused, 3 days prior to 26.09.2008 and as per his direction, he got attestation from one Rani [PW.8] and presented the application at Kallakaurichi Taluk Office on 26.09.2008. He also admits that when he went to VAO Office the first time and enquired about PHP pension showing his application, the accused did not demand any illegal gratification.

12. Pointing out the portion of the evidence given by PW.2, the learned Counsel appearing for the appellant would submit that this witness is totally unreliable and unreability. The prosecution has disowned this witness and declared him hostile. PW.2 [Saravanan] admits his knowledge about the illegal felling of tree by Manimaran, imposition fine on Manimaran by the VAO (the appellant herein) and tendering of Rs.1,500/- to the accused under the pretext of fine amount levied on Manimaran. While so, the trial Court ought to have rightly rejected the prosecution case, instead of taking position of the deposition of PW.2 and relying upon the evidence of PW.3 for corroboration.

13. Pointing out the contradiction of PW.2 [Saravanan] and PW.3 [Ashokan] regarding who gave the pre-arrange signal to the Trap Team after giving the bribe money, the learned counsel appearing for the appellant would submit that the presence of PW.3 gets doubtful due to contradiction on material facts between PW.2 and PW.3. Further, it is also pointed out by the learned Counsel for the appellant that PW.3 [Ashokan] in his Chief examination had stated that on 04.10.2008 as per the instruction of his Superior Officer, he reported at Vigilance and Anti Corruption Office at Villupuram. Rajan and other witnesses were also presented in the Vigilance and Anti

Corruption Office. In the cross examination, he admits that the instruction to report before the Vigilance and Anti Corruption Office, Villupuram was an oral instruction by his superior and he got the instruction at 1.00 pm on 14.10.2008. Whereas, according to PW.2 [Saravanan], the defacto complainant, he went to Vigilance Office at Villupuram on 14.09.2008 at about 4.30 pm and met Venkatesan, Inspector of Police. Thus, even before PW.2 [Saravanan] could give his complainant, the independent witnesses were requested to report before Vigilance Office in anticipation of the complaint from PW.2 [Saravanan] which is not probable and acceptable by any prudent mind.

14. The Trial Court has relied upon portion of the evidence of PW.2 [Saravanan] and PW.3 [Ashokan] to hold the appellant guilty for demand and acceptance of illegal gratification. Without proof of demand or acceptance of illegal gratification, the trial Court has drawn the presumption against the appellant/accused under Section 20 of the Prevention of Corruption Act, 1988. The finding of the Trial Court is perse improper and contrary to the facts and law, therefore requires reconsideration and liable to be set aside.

15. Per Contra, the learned Additional Public Prosecutor would submit that In view of the judgment rendered in Radha Mohan Singh Vs.State of U.P reported in AIR 2006 (SC) 951 even though the defacto complainant has turned hostile during his cross examination, his evidence need not be rejected intoto. Further, he contended that minor contradictions between PW.2 [Saravanan] and PW.3 [Ashokan] regarding who gave the pre-arrange signal to the trap team and the time of reporting to the Vigilance Office are insignificant and they are not material facts likely to disprove the prosecution case against the appellant regarding illegal demand of gratification. While prosecution had proved demand and acceptance of illegal gratification through the witnesses. The witnesses to the recovery mahazar and the chemical analyst report [Ex.P.15] proves the recovery of money which is not denied by the accused. Whereas, the explanation for receiving the money not been probalised by the defence. Therefore, the finding of the Trial Court is legally sustainable and there is no ground to allow this appeal.

Points for Consideration

Whether the conclusion of the trial Court holding appellant guilty despite the contradiction between the decoy witnesses of [PW.2 and PW.3] and the hostility of PW.2 ?

16. The recovery of tainted money from the appellant is not denied by the appellant/accused. Through the cross examination of PW.2 and other witnesses, certain facts which are elicited would show that the appellant/accused S.Umaidurai, V.A.O has taken action against one Manimaran for illegal felling of Government trees. It is also admitted by PW.2 that the money for tap was given to him by Manimaran. It is admitted by him that on the advice of Manimaran in respect of lodging the complainant against V.A.O before Vigilance and Anti Corruption. From Ex.P.1 it appears the explanation of the appellant have been recorded by Trap Laying Officer and forwarded along with the statements of the other witnesses to the sanction authority. If there was no statement of the accused, there is a reason for PW.1 [Vanitha] to mention in her sanction order Ex.P.1 that she perused the statement of witnesses as well as the statement of the accused. When, there is a statement of the accused, it is duty of the prosecution to place it before the Court for due appreciation. Prosecution cannot screen document inconvenient to them from the eyes of the Court. More fully when Vigilance and Anti Corruption Department manual directs the Trap Laying Officer to record the statement of the accused persons, immediately after the trap proceedings. Though the said procedure is only directory in nature, and not mandatory having recorded the statement and placed before the sanctioning authority, the same should have been placed before the Court. as to test the contemporaneous explanation given by the accused against the incriminating evidence pitted against him on oath by the prosecution witnesses during the course of trial.

17. In this case, the accused has elicited from the defacto complaint certain facts which provides reason for the receipt of Rs.1,500/- from PW.2 . When the explanation given by the accused during the trap is not before the Court, the facts elicited during the examination of PW.2 is to be construed as the explanation of the accused person for receiving the money. The said explanation is plausible and the theory of motive is probabilised from the admission of PW.2 in the cross examination. When the accused has given plausible explanation for receiving the money, then the presumption under Section 20 of Prevention of Corruption Act cannot be drawn without proving demand of illegal gratification and acceptance of the same which is sine quo non to draw presumption under Section 20 of the Prevention of Corruption Act.

18. The defacto complainant PW.2 had not supported the case of the prosecution and had turned hostile, during the cross examination. The evidence of PW.3 who is the accompanying witnesses admits that he was at Vigilance Office on 14.08.2008 even before PW.2 came to that office for lodging the complaint. This causes grave doubt about the very presence of PW.3

[Ashokan] during the trap proceedings. In such circumstances, it is improper to hold the appellant guilty of offence under Section 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act. The hostility of the defacto complainant and the improbability of decoy witness being present in the Vigilance and Anti Corruption Office even before the receipt of complaint entitles the appellant the benefit of doubt.

19. In the result, the Criminal Appeal No.487 of 2014 is allowed. The judgment of conviction and sentence passed by Special Court, [for Prevention of Corruption Cases], Villupuram Special C.C.No.36 of 2014 dated 02.09.2014 is hereby set-aside. The bail bond executed if any by the appellant shall stand cancelled. Fine amount paid if any shall be refunded to the appellant. The appellant is set at liberty forthwith unless their presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

bsm

To

1. The Chief Judicial Magistrate,
Villupuram.
2. The Judge,
Special Court, (For prevention of Corruption cases),
Villupuram
3. The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Villupuram.
4. The Additional Public Prosecutor,
High Court, Madras.
5. The Chief Judicial Magistrate,
Villupuram.

+1cc to Mr.B.Vasudevan, Advocate SR.No. 27388

Criminal Appeal No.487 of 2014

KJI(CO)
GN(12/04/2018)