

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :12.02.2018

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Criminal Appeal No.528 of 2014

P.Purusothaman

.. Appellant

/versus/

The State rep.by
The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai.
(Crime No.8/2011)

.. Respondent

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code r/w Section 27 of the Prevention of Corruption Act, 1988 against the judgment made in Spl.case No.15 of 2012, dated 30.09.2014 passed by the Special Judge cum Chief Judicial Magistrate, Chenglepet.

For Appellant :Mr.A.Ramesh Sr.C. For
Mr.P.Nagaraju
For Respondent :Mr.P.Govindarajan, APP

J U D G M E N T

This appeal against judgment of conviction is preferred by the accused person, who is sentenced to undergo one year RI and to pay a fine of Rs.3,000/- in default to undergo 3 months SI for the offence under Section 7 of Prevention of Corruption Act, 1988 and sentenced to undergo 1 year RI and to pay a fine of Rs.3,000/- in default to undergo 3 months SI for the offence under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988.

2. Sum and substance of the attack on the trial Court judgment is that while the prosecution has miserably failed to prove the case of demand and acceptance of illegal gratification from PW-8 [Mr.Jabez P.Williams], without considering the lacuna in the prosecution case starting from sanction to prosecute, framing of charge and non-corroboration of evidence regarding demand and acceptance coupled with the contradiction in the manner in which the tainted money recovered from the accused

person, which goes to the root of the case, the trial Court had totally misconceived the evidence and got itself misled to render judgment of conviction. Hence, it is liable to be set aside.

3. Per contra, the contention of the learned Additional Public Prosecutor is that the defacto complainant[PW-8] made a request to the accused/appellant to transfer patta in the name of Indian Gospel Mission and to issue FMB sketch. For considering his request, the accused person demanded Rs.12,000/- and as a initial payment, he demanded Rs.6000/- from the defacto complainant [PW-8] on 09.03.2011. Since the defacto complainant [PW-8] was not inclined to pay the demanded money, he approached the Vigilance and Anti-Corruption Wing and lodged a complaint which is marked as Ex.P5.

4. In pursuant to the said complaint, the trap was arranged by the trap laying officer. After explaining and demonstrating the significance of phenolphthalein test before the defacto complainant and the decoy witnesses, they have proceeded to Village Administrative Office on 10.03.2011 at about 14.30 hours and they found that the accused was not in his office but, he was in his premises at Kuberan Nagar near Village Administrative Office. The trap team had gone to that place. Initially, the defacto complainant [P.W.8] and PW-2/accompanying witness [Mr.Syed Riazuddin] went to the premises. On seeing PW-2, the accused demanded bribe. The defacto complainant[PW-8] gave the tainted money to the accused person, who received it and kept in his shirt pocket.

5. On receiving the pre-arranged signal, the trap team had gone inside the accused office and recovered the tainted money from the accused person. On his information, documents relating to the patta transfer were recovered from the possession of the accused. The hand wash and shirt wash of the accused person collected at the time of trap were sent to chemical analysis and found positive to the phenolphthalein test. Thus, the prosecution through witnesses and exhibits had proved the case of demand and acceptance to the satisfaction of the trial Court. Hence, there is no necessity to interfere with the judgment of the trial Court.

6. Point for consideration:

1. Whether there is any lapse on the part of the trial Court in appreciating the evidence?
2. Whether the judgment of the trial Court requires interference?

7. Learned Senior Counsel appearing for the appellant drew

the attention of this Court to the sanction order for prosecution which is marked as Ex.P1. This order indicates that the Revenue Divisional Officer, Chengalpattu who is a person competent to remove the accused/appellant, had stated that on 09.03.2011 at about 11.15 hours, the accused as Village Administration Officer, Guduvancherry demanded Rs.6,000/- as bribe for arranging to issue patta and FMB sketch to the defacto complainant. The subsequent paragraph of the sanction order interchanged the name of the accused and the defacto complainant.

8. According to the sanction order, though he has received the sanction report indicating the act of the accused person constitutes offence punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, he has not included Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 in the sanction order. He has stated that he is satisfied, the offence under Section 7 of the Prevention of Corruption Act, 1988 is made out. He might have thought that the offence under Section 13(2) r/w 13(1)(d) is not made out from the records, he perused. However, the trial Court has taken cognizance of offence for both Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The manner in which the sanction order drafted indicates some factual error that by itself does not lead to any illegality in the prosecution. Though before the competent authority, records were placed seeking sanction to prosecute under Section 7 as well as 13(2) r/w 13(1)(d) of Prevention of Corruption Act, he has restricted his sanction only to Section 7 of Prevention of Corruption Act, 1988.

9. While now looking at the charge framed, though sanction to prosecute is for Section 7 of the Prevention of Corruption Act, 1988 alone, the trial Court without sanction from the competent authority, has framed charge for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 also. For the present, this Court reserve its comment on this aspect and proceed to consider the other grounds raised by the learned counsel for the appellant challenging the impugned order of conviction.

10. The case of the defacto complainant is that his mother Tmt.Santhi Willam purchased the property from one Dhanalakshmi Ammal vide sale deed dated 22.07.1996, which has been marked as Ex.P7. She did not get patta transferred in her name after purchase. As per advise of his auditor, he approached the appellant, who was the Village Administrative Officer of Kannivakkam village at the time of purchase. He called the accused over phone and questioned him to arrange for transfer of patta and issuance of FMB sketch. Then the defacto complainant

came to know that the accused/appellant is no more in the Village Administrative Office at Kannivakkam Village and he has transferred to Guduvancherry. However, he assured him to complete the work by using his personal influence for which he demanded Rs.12,000/- for himself. When he expressed his inability to give such a huge money, he agreed to receive Rs.6,000/- to be paid as advance and the remaining to be paid after completion of the work. According to the appellant, this has taken place on 09.03.2011. Since he was not inclined to give any bribe, he has approached the Director of Vigilance and Anti-Corruption, Chennai and lodged the complaint, which is marked as Ex.P5. His specific complaint against the accused person is demand of Rs.12,000/- and out of which Rs.6,000/- was paid as advance.

11. Further, the evidence of the prosecution is that on 10.03.2011 trap was laid, while Rs.6,000/- was given to the appellant/accused, while the case of the prosecution starts with demand of Rs.12,000/- on 09.03.2011 and receipt of Rs.6,000/- on 10.03.2011, the sanction order does not whisper about the total demand.

12. The entire cause to demand bribe arose for transferring patta in the name of Indian Gospel Mission for which the defacto complainant is the Vice Chairman, but the evidence available on record the name in patta was transferred long back.

13. The evidence of the defacto complainant [PW-8] before the Court is that his mother purchased the property in the year 1996 for sale consideration of Rs.69,000/-. Patta was not transferred in her name. The defacto complainant[PW-8] approached the accused/appellant for change of patta. At that time, he demanded illegal gratification of Rs.12,000/-, out of which advance of Rs.6,000/- was given to him as demanded.

14. The entire basis of the complaint is shattered by one document namely, Ex.P7 which according to the prosecution was recovered from the possession of the accused after completion of trap proceedings and during the search and seizure of the office premises. The perusal of the said document reveals, patta was transferred in the name of Indian Gospel Mission for S.No.125/3C patta No.217. This computerprintout patta Ex.P-7 has been taken on 08.03.2011 a day before the alleged demand made by the accused/appellant for name transfer.

15. Further, the Court documents namely, adangal for the property from fasli (from 1405 to 1419) corresponding year 2005 to 2010 reveal that the manual adangal has been prepared by the Revenue Department and the patta for the said property had been transferred in the name of Indian Gospel Mission vide,

proceeding No.6PT849/96-97, dated 18.11.1996.

15. On a cumulative scrutiny of Ex.P7-computer printout patta, Ex.C3 series and Adangal extract, we find patta for the said land was transferred in the name of Indian Gospel Mission as early as 1996 and there is no need at all for the defacto complainant to seek transfer of patta once again after lapse of 15 years. More so, when the computer printout which has been recovered from the accused/appellant has been extracted just a day before the alleged date of demand.

16. According to the prosecution, this document Ex.P7 has been given to the accused person by the defacto complainant along with the other documents, such as title deed and requisition for change of patta. Surprisingly, the request for change of patta is not placed before this Court. The document which show the patta was transferred long ago, is before the Court. When the patta has already been transferred, even according to the prosecution as early as 1996, the reason for demanding money or reason for the defacto complainant to approach favour from the appellant, who is no more in-charge of concerned village, causes doubt about the case of the prosecution.

17. The trial Court has provided its own reasoning and meaning for the documents relied by the prosecution. By doing so, it has misdirected itself leading to erroneous judgment of conviction. Therefore, this Court constrains to record certain grave lapses both on the part of the prosecution as well as the trial Court, while dealing this case. As far as the prosecution is concerned, there is a Manual for the Directorate of Vigilance and Anti-Corruption. Though it is not mandatory, it has a force of directory in nature. Any person in-charge of trap proceedings is bound to follow the Manual. In this case, PW-3 and PW-4 are eye witnesses for recovery of the tainted money. Both had consistently deposed that as soon as the trap laying officer entered the office of the accused person, he demanded the accused to take away the money. After recovering the tainted money from the accused person he conducted the phenolphthalein test. Though the recovery mahazar and the trap laying officer has spoken otherwise, the eye witnesses, who are procured for the purpose of witness, the trap proceedings have deposed something contradictory to the contemporary documents, viz., mahazar and the trap laying officer. While the Manual specifically instructs the trap laying officer to conduct the phenolphthalein test before recovering the tainted money or other articles. In the course of trap proceedings, recovering the articles and trap money before and phenolphthalein test will definitely dent the case of the prosecution. Further, the Manual also instructs the trap laying officer to question the

accused immediately after recovery of tainted money from the accused person so as to give him an opportunity to explain the reason for possessing the tainted money or his statement may even lead to further recovery of incriminating evidence which may be admissible under Section 27 of Indian Evidence Act.

18. In this case, search of the office premises led to recovery of the computer printout patta dated 08.03.2011. If this document had been confronted with the accused person, immediately after the trap proceedings, he could have given his explanation about the entire episode. The trap laying officer himself would have been convinced about the possibility of such explanation. Since such an opportunity was not given to the accused person, he has faced the ordeal of trial and order of conviction by the trial Court.

19. On the part of the trial Court, while framing the charge, little more alacrity could have saved the time of the Court. Though through a catena of judgments the trial Court has been instructed to frame charge based on the materials placed by the prosecution, which contains necessary details as contemplated under Sections 211), 212 and 213 of the Code of Criminal Procedure, often the trial Court fails to do that. It is expected that the Presiding Officers of Special Court bestow their concentration in framing charge in consonance with the mandatory requirement under the above said Sections.

20. Accordingly, the Criminal Appeal is allowed. Conviction judgment made in Spl.case No.15 of 2012, dated 30.09.2014 passed by the Special Judge cum Chief Judicial Magistrate, Chenglepet is hereby set aside. Bail bond if any executed by the appellant shall stand cancelled. Fine amount if any paid by the appellant shall be refunded to him. He is at liberty unless his presence is required in connection with any other case.

Sd/-

सत्यमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police, Vigilance and Anti-Corruption, Chennai.
- 2.The Special Judge cum Chief Judicial Magistrate, Chenglepet.
- 3.The Public Prosecutor, High Court, Madras.

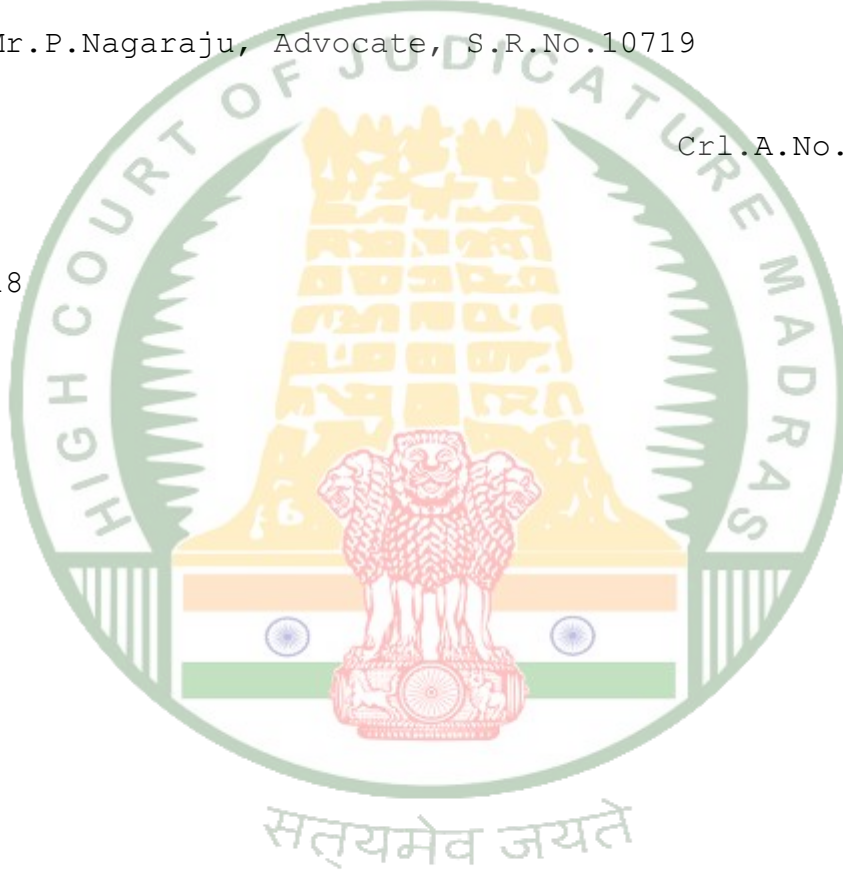
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High Court, Madras
2. The Section Officer,
Criminal Section,
High Court, Madras (2 Copies)
3. The Section Officer,
'F' Section,
High Court, Madras - for further action if any to be taken

+1cc to Mr.P.Nagaraju, Advocate, S.R.No.10719

Cr1.A.No.528 of 2014

PA(CO)
CS/27/02/18



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