Bail Slip

The appellant herein/Accused namely S.Sivakumar, Assistant Engineer, Kaveripattinam North Section, Krishnagiri EDC, was released on Bail on 23/02/2017 made in CRL MP.No.2757 of 2017 in Crl A.No.96 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2018

Pronounced on : 03.08.2018

Coram

The Honourable Dr.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.96 of 2017

S.Siva Kumar,
Assistant Engineer,
Kaveripattinam North Section,
Krishnagiri EDC
(Under Suspension) ...Appellant/Accused

/versus/

The State Represented by
Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri,
(Crime No.2/2014/AC/KG V&AC
Krishnagiri) ... Respondent/complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to set aside the judgment of conviction passed in Special C.C.No.5 of 2015 on the file of the Chief Judicial Magistrate, Krishnagiri, dated 16.02.2017.

For Appellant : Mr.S.Anbalagan

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

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction passed in Special C.C.No.5 of 2015 on the file of Chief Judicial Magistrate, Krishnagiri, dated 16.02.2017.

2. The appellant Mr.Siva Kumar, Assistant Engineer, TANGED Co., Kaveripattinam (North), Krishnagiri District found guilty by the trial Court for receiving Rs.3,000/- as illegal gratification from Ramesh [PW.2] for preparing estimation to shift the electricity line which was passing over the complainant's residential house at Thimmapuram Village. The trial Court has convicted and sentence the appellant i). to undergo 6 months R.I and to pay a fine of Rs.1,000/- in default one months S.I for offence under Section 7 of Prevention of Corruption Act. ii).To undergo 1 (one) year R.I and to pay a fine of Rs.1,000/- in default, one months S.I for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

3. The case of the prosecution:

The defacto complanaint R.Ramesh [PW.2] made an application dated 01.11.2014 to Assistant Executive Engineer, TANGED Co., Kaveripattinam for shifting of electricity line passing through his residential house. This application was received on 12.11.2014 by the accused/appellant who was then Assistant Engineer, TANGED Co., (North) Kaveripattinam, Krishnagiri District. On 12.11.2014, the accused/appellant demanded Rs.3,000/- to prepare estimation for shifting Electricity power line and for obtaining approval from the Assistant Executive Engineer. He again reiterated the demand on 17.11.2014, when the complainant met him. Therefore, PW.2 gave a complaint to Deputy Superintendent of Police, Vigilance and Anti Corruption, Krishnagiri, on 18.11.2014. Thiru.Gunanasekaran [PW.11], Deputy Superintendent of Police received the complaint and after obtaining the concurrence from Superintendent of Police, Western Range, Vigilance and Anti Corruption Police, registered F.I.R and proceeded with the trap. On 19.11.2014, in the presence of official witnesses namely N.Chidambaram [PW.3], Revenue Inspector, Krishnagiri and N.Parasurman [PW.8] from District Employment Office, Krishnagiri, the significance of Sodium Carbonate and Phenolphthalein test was demonstrated. The trap money of Rs.3,000/- [six five hundred rupees currencies] was smeared with phenolphthalein power and entrusted to Ramesh [PW.2]. The entrustment mahazar [Ex.P.5] was prepared in the presence of official witnesses. Thereafter, the defacto complainant and the shadow witness went to the office of TANGEDCO, Kaveripattinam Office at about 9.40hrs. They were followed by Gunasekaran [PW.11], Deputy Superintendent of Police, [the trap laying Officer] and his team. After receiving the pre-arranged signal from Ramesh [PW.2], the trap team entered the room of the accused/appellant. After identifying themselves to the accused, phenolphthalein test was conducted on both the hands of the accused. The test proved positive. The tainted money of Rs.3,000/- was recovered from the accused and recovery mahazar [Ex.P.6] was prepared. Samples of the hands wash of the accused collected during the trap was sent for chemical analysis and same found presence of phenolphthalein. After receiving the report of the chemical analysis [Ex.P.16] and sanction [Ex.P.1] to prosecute the accused from P.Chinnathambi [PW.1] final report was filed.

4. Based on the final report, the trial Court has framed charges against the accused for offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

5. To prove the charges, the prosecution has examined 12 witnesses. Marked 20 Exhibits and 5 material objects. No defence exhibits were marked.

6. Aggrieved by the judgment the present appeal is preferred by the appellant and taken up for consideration.

7.Contention of the appellant

The trial Court erred in his decision, holding the accused guilty, despite the fact that the defacto complainant had not supported his own complaint, regarding the alleged demand and acceptance. Though Ramesh [PW.2], the defacto complainant had failed to support the case of the prosecution regarding demand and acceptance, the trial Court, had relied upon the evidence of Parasuraman [PW.8] one of the official witness who was not even present at the time of demand and acceptance.

8. According to the learned counsel for the appellant PW.2 is an unreliable witness. His only interest was to get his work done with the help of his friend in Police Department. So, he had given a false complaint against the appellant. In his deposition, PW.2 had not spoken about the demand of illegal gratification by this appellant. According to this witness, on 01.11.2014, he met the accused. He told him to come with the application after 10 days. On 12.11.2014, he again met the appellant, he was informed by the appellant that he should deposit Rs.50/- for shifting. After making deposit, he again met the appellant on 17.11.2014 on that day, two other persons demanded Rs.3,000/-, not the appellant. Therefore, he gave a complaint on 18.11.2014.

9. PW.2 [Ramesh] had further deposed that, on the day of trap [19.11.2014] he met the appellant/accused alone. The shadow witness Chidambaram [PW.3] did not accompanied him. He took out the tainted money and kept the money inside a register on the table and left the accused room. In the cross examination, he admits that, he earlier gave a complaint to Vigilance and Anti Corruption Department on 06.11.2014. The trap laid on 07.11.2014 failed, since the accused did not attended duty on 07.11.2014. The very same official witnesses came on 19.11.2014 to oversee the trap. The prosecution has accepted this witness and not treated him as hostile. Belatedly, when the prosecution sought to declare him hostile, the trial Court declined to entertain the request. PW.3 [Chidambaram], the shadow witness who is expected to support the

case of the prosecution, has not corroborated the evidence of PW.2 [Ramesh] regarding demand and acceptance. In the cross examination, PW.3 [Chidambaram] admits that he did not accompanied the defacto complainant to the chamber of the accused. He admits that he did not hear the conversation directly between the accused and Ramesh [PW.2]. He came to know only through Ramesh [PW.2] about the demand and acceptance.

10. PW.3 [Chidambaram] had deposed that on seeing the police, the accused dropped the money beneath his table. The Deputy Superintendent of Police after conducting the phenolphthalein test asked the accused to take the money and present. Accordingly, the accused took the money beneath his table and produced it. The money which was received by Parasuraman [PW.8] compared with the numbers found in the entrustment mahazar [Ex.P.5] and found tallied.

11. PW.8 [Parasuraman] had deposed that on seeing them, the accused dropped the money. On the instruction of the Trap Laying Officer, A.D of Electricity Department Thiru.Ethiraj [PW.5] came to the trap spot. After confirming the presence of phenolphthalein in the hands of the accused, by conducting the phenolphthalein test, the trap Laying Officer asked the accused where is the money given by Ramesh [PW.2]. The accused took the currencies of six five hundred rupees notes from the floor and handed over it to the trap laying Officer.

12. PW.5 [Ethiraj] had deposed that on instruction of Deputy Superintendent of Police, he came to the seat of the appellant. He was told that the appellant was caught red handed for receiving Rs.3,000/- as illegal gratification. He has not spoken about the phenolphthalein test conducted in the fingers of the accused.

13. Pointing out the above contractions between PW.2 [Ramesh], PW.3 [Chidambaram], PW.5 [Ethiraj] and PW.8 [Parasuraman], the learned counsel appearing for the appellant would submit that neither for the demand or acceptance, the prosecution has placed before the Court any cogent or reliable evidence. The contractions between the evidence of PW.3 [Chidambaram] and PW.8 [Parasuraman] regarding recovery and the contractions between the evidence of PW.5 [Ethiraj] and PW.8 [Parasuraman] regarding conducting phenolphthalein test cumulatively will clearly establish that the prosecution has failed to prove the guilt of the accused. However, the trial Court, on relying upon the expert opinion and the evidence of PW.8 [Parasuraman] which is not corroborated by any other witnesses, had drawn presumption under Section 20 of Prevention of Corruption and held the appellant guilty which has to be set-aside.

14. Per contra, the learned Additional Public Prosecutor appearing for the Vigilance and Anti Corruption would submit that PW.2 [Ramesh] the defacto complainant had made a request for shifting the electricity line on 12.11.2014. Demand of illegal gratification of Rs.3,000/- is mentioned in the complaint [Ex.P.2]. It is true, that PW.2 [Ramesh] has not supported the case of the prosecution and it is equally true that he was not declared as hostile witness. However, the trial Court has taken note of the fact that PW.2 has not supported the case of the prosecution. He was neither declared hostile, in spite of the request from Public Prosecutor, such a request was belated after completing the examination of the witnesses. However, the trial Court has rightly taken out the reliable portion of the evidence given by PW.2 which has been corroborated by the evidence of PW.3 in respect of demand of illegal gratification.

15. Recovery of tainted money from the possession of the appellant and presence of phenolphthalein in his hand is not disputed. The application for shifting the electricity line was pending with the appellant and he was supposed to discharge his official duty without expecting any favour from the applicant Ramesh [PW.2]. However, demand of illegal gratification has found in the complaint and the recovery of tainted money from the possession of the appellant which talled with numbers noted in the entrustment mahazar. It is Suffices to hold that the prosecution has proved the demand and acceptance of a pecuniary advantage to do favour to PW.2.

16. Therefore, the trial Court is right in presuming that the said money was received only as illegal gratification and attracts presumption under Section 20 of Prevention of Corruption Act. The appellant had not rebutted the said presumption. In the absence of any plausible explanation for the receipt of money, there is no error in the conclusion of the trial Court. Drawing presumption under Section 20 of Prevention of Corruption Act is a mandatory requirement. The trial Court has rightly drawn the statutory presumption against the appellant since the prosecution has proved beyond doubt, the demand, acceptance and recovery of tainted money.

17. Points for consideration

> Whether the trial Court is correct in holding that the prosecution has proved the acceptance of gratification other than illegal remuneration which would be presumed as valuable thing obtain as a motive to do a favour?

18. From the evidence, both document and oral, this Court finds that the application for shifting the electricity line made by PW.2 [Ramesh] is dated 01.11.2014. Though it is

dated as 01.11.2014, the application requesting shifting of electricity line which forms part of the file marked as Ex.P.4 reveals that this request has been received by the office of T.N.E.B, Kaveripattinam only on 12.11.2014. The seal and registration number with date is found in this document and the endorsement clearly indicates that the written request for shifting was made only on 12.11.2014 and on the same day, the accused/appellant had prepared the estimation for the shifting. The estimation found in [Ex.P.4] file indicates that the appellant has to pay charge of Rs.6,980/-. On the back of this letter, this Court finds the Assistant Executive Engineer, who has to pass order on the estimation prepared by the appellant, had returned back the proposal on 15.11.2014. He has mentioned that there is discrepancy in referring LOC-E1 to E2 LTS Q 300 at one place and LTS Q 200 in another place. Further, it is also pointed in the estimation 'reference' not mentioned. For the said two reasons, the Assistant Executive Engineer had returned the proposal on 15.11.2014. Therefore, the contention found in the complaint [Ex.P.2] that on 12.11.2014 when PW.2 met the accused the Assistant Executive Engineer Siva Kumar at 9.30am, he demanded bribe and said only if he pay the amount, he will prepare the estimation is found to be false. On 12.11.2014 itself, the estimation along with the plan had been prepared by the accused and forwarded to the Assistant Executive Engineer and same has been received by him and acted upon.

19. Yet another document which throw doubt in the case of the prosecution is Ex.P.10. It is the receipt given by T.N.E.B in the name of PW.2 for receiving Rs.50/- towards application and registration fees. This receipt indicates that a sum of Rs.50/- has been received from PW.2 [Ramesh] at the office of TANGED Co., on 12.11.2014 at 11:32:20 hrs. It is an electronic generated receipt indicating time and date. Thus, it is clear from the document, that the application dated 01.11.2014 for shifting the electricity line, received at the office of TANGED Co., on 12.11.2014 along with the documents which form part of the file marked as Ex.P.4 and the registration fees has been remitted only at 11:32:20 hrs. Thereafter, on the same day, the accused has made the spot visit and prepared a rough sketch [Ex.P.11], estimation and also forwarded the letter of proposal to Assistant Executive Engineer. Contra to these documents, in the complaint [Ex.P.2] given to DV & AC, PW.2 had stated that on 12.11.2014 when he met the accused at 9.30 hrs, he demanded bribe of Rs.3,000/- and said only on payment of bribe, he will prepare the estimate. This cannot be true because, the document speaks that on receipt of the payment, the accused has completed his job and forwarded the documents with estimation to Assistant Executive Engineer on the same day.

20. It is also alleged in the complaint [Ex.P.2] that PW.2 again met the accused on 17.11.2014 on that day also he demanded illegal gratification of Rs.3,000/- to proceed. While

the record indicates that, the request for shifting the electricity line received on 12.11.2014 has been processed and proposal was made ready by the accused and forwarded to Assistant Executive Engineer on 12.11.2014 itself who also in turn gone through the proposal and returned the proposal on 15.11.2014. Pointing out the discrepancies and omission to mention the 'reference'.

21. In the light of the above circumstances, if one look at the deposition of PW.2, it could be easily found that the appellant has not demanded any money from the defacto complainant at any point of time. In fact without his demand, PW.2 had voluntarily kept the money on the table of the accused. The shadow witness PW.3 though stated in his chief examination that he saw and heard the appellant demanding and receiving the money, in the cross examination, he admits that, he was not present near PW.2. When PW.2 met the accused and he did not know what transpired in the chamber of the accused. Thus, the prosecution has failed in proving the demand as well as acceptance of any gratification.

22. The discrepancies pointed out by the learned counsel for the appellant between PW.2 [Ramesh] deposition and PW.3 [Chidambaram] deposition, regarding the manner in which the money was taken from the possession of the appellant, throws serious doubt about the case of the prosecution, regarding recovery of tainted money marked as M.O.1. When the prosecution is unable to prove the demand or acceptance of gratification by the accused, the presumption that such acceptance is a gratification as reward or motive to do any favour cannot be drawn. In fact the trial Court, after weighing the evidence had heavily relied upon the evidence of the Trap Laying Officer and one of the accompanying witness. Considering the presence of phenolphthalein in the hands of the accused proved through chemical analysis report, had held the accused guilty. He has also taken note of the failure of the accused to explain the possession of tainted money.

23. Unless and until, the prosecution proves the acceptance of gratification, the Court should not jumped to draw the presumption under Section 20 of Prevention of Corruption Act, 1988. In this case, the prosecution has failed to prove the acceptance. The infirmities and contractions in the prosecution evidence, more particularly the failure of PW.2 to support the case of the prosecution and doubt about the presence of PW.3 at the scene of trap, leads to conclusion that the prosecution has failed to prove beyond reasonable doubt the acceptance of gratification by the appellant. In such circumstances, the trial Court has erroneously drawn presumption adverse to the appellant.

24. In the result, the Criminal Appeal No.96 of 2017 is allowed. The judgment of conviction and sentence passed by the learned Chief Judicial Magistrate, Krishnagiri in C.C.No.5 of 2015 dated 16.02.2017 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.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate, Krishnagiri.

2. The Inspector of Police,
Vigilance & Anti-Corruption,
Krishnagiri,

3. The Public Prosecutor,
High Court, Madras.

4 The Section Officer (Records)
Criminal Section, High Court, Madras

+1 cc to MR.S.ANBALAGAN, Advocate SR.No.53404

judgment made
Criminal Appeal No.96 of 2017

NRJK(CO)
SMI/20.08.2018