

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.575 of 2014

State of Tamil Nadu rep.by.
The Public Prosecutor,
High Court,
Madras - 600 104.

... Appellant

Vs.

S.Ramkumar,
Block Development Officer,
Manampoondi Village,
Thirukoyilur Taluk,
Viluppuram District.

... Respondent/Accused

Prayer: Criminal appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal passed by the learned Special Judge Cum Chief Judicial Magistrate, Villuppuram in Spl.Case No.1 of 2010 dated 13.12.2013 and convict and sentence the respondent/accused.

For Petitioner : Mr.V.Arul
Government Advocate (Crl.Side)

For Respondent : Mr.S.Sivakumar

सत्यमेव जयते
O R D E R

The appeal is preferred by the State against the order of acquittal passed by the trial Court in Spl.Case No.1 of 2010 on the file of Special Judge cum Chief Judicial Magistrate, Villuppuram.

2. The gist of the prosecution case is that the accused S.Ramkumar, was working as Block Development Officer of Mugaiyur Panchayat Union, Villuppuram District, demanded Rs.5,000/- as bribe from one C.S.Sekar son of Chandrasekar for releasing the vehicle sold in auction. The specific case of the defacto complainant is that on seeing the tender publication through newspaper, he participated in the

tender for purchase of Trax Jeep bearing Reg.No.TN 04G 0193 on 13.02.2003. He submitted his tender document and on the same day at 4'o clock, the tender was opened and his tender for Rs.23,000/- was found to be the highest bid. Immediately, on the instruction, he has paid the money and enquired the accused, when he can take delivery of the vehicle. At that time, it is alleged that the accused who was serving as BDO has demanded Rs.5,000/- and only if Rs.5,000/- bribe is paid, the defacto complainant can get the vehicle delivered. When the defacto complainant enquired the accused when and where to give the money, the accused has informed him that he will be at Get Well Hospital at 8.00 pm on 02.03.2009 and asked him to come to Get Well Hospital on that day and give the bribe money. The defacto complainant who was not inclined to give bribe, has given complaint to the Vigilance and Anti Corruption Wing on 02.03.2009 at 3.00 pm.

3. Thereafter, the investigation was taken up initially by preparing pre trap proceeding and thereafter, the defacto complainant along with accompanying witness and the trap team had gone to Get Well Hospital about 9.00 pm. The defacto complainant along with witness Chandrasekaran P.W.9 had gone to room No.7, Get Well Hospital at about 9.10 pm. The defacto complainant given the tainted money Rs.5,000/- to the accused, when he demanded it. Thereafter, the trap team has entered the room on receiving the prearranged signal and recovered the money from the accused. After investigation, the prosecution has laid the final report. Based on the final report, the trial Court has framed charge under Section 7 of Prevention of Corruption Act and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The prosecution has examined 19 witnesses. 24 exhibits and 3 material object were marked through these witnesses.

4. The trial Court after appreciating evidence let in by the prosecution has pointed out that there is grave doubt in the prosecution case. Specifically, the place of occurrence viz., Room No.7, Get Well Hospital, when the prosecution has failed to prepare sketch of the scene of occurrence and the owner of Get Well Hospital P.W.14 turned hostile, the uncorroborated evidence of P.W.2, that he along with Chandrasekaran P.W.9 went to Get Well Hospital and met the accused person at Room No.7 at about 9.10 p.m appears to be false. The trial Court has also taken note of admission by P.W.2 that the accused was found in drunken state when he met him and gave the bribe money and it is the specific case of the prosecution that P.W.10 Ramasamy was also present in Room No.7, when the bribe money was given to the accused, whereas P.W.10 has denied his presence and there is no material evidence to show the presence of P.W.10 along with the accused person at room No.7, Get Well Hospital.

5. Further, taking note of the discrepancy found in the address, the house search alleged to have been conducted by the investigation team headed by P.W.19, the trial Court has concluded that there is discrepancy and contradiction in the evidence let in by the prosecution. The factum of demand and acceptance of bribe are not proved. The trial Court has also taken note of the fact that the accused who is BDO is not competent person to release vehicle that sold in auction. For release of those vehicles order of the District Collector is required. The auction was conducted on 13.02.2008. Permission to release the vehicle was sought from the District Collector vide letter dated 20.02.2009 and pursuant to that, the District Collector has passed the order of delivering the vehicle on 03.03.2009. While so, the demand of Rs.5,000/- on 13.02.2009, which has been brought to the notice of the investigation vide complaint dated 02.03.2009 is unbelievable due to delay in lodging the complaint.

6. Aggrieved by the said finding of the trial Court, the State has preferred the present appeal on the ground that the accused Ramkumar while serving as BDO of Panchyat union had demanded Rs.5,000/- from the defacto complainant on 25.05.2009 and told him to pay the money on 02.03.2009 at his room in Get-Well Hospital complex. On receipt of the complaint, Ex.P2, FIR was registered and pre trap proceeding was performed in the presence of the witnesses. After preparing the pre trap mahazar, the trap team headed by P.W.18 went to the Get Well Hospital complex. The accused was in Room No.7, along with his colleague P.W.10, another BDO demanded and received Rs.5,000/- as bribe money from defacto complainant P.W.2, which was later recovered by the trap team after conducting phenolphthalein test on the hands of the accused person was proved to be positive. The seizure of tainted money from the accused person is reflected in the mahazar marked as Ex.P4, a document signed by P.W.9 Chandrasekar and another witnesses by name Pakrisamy. Since the prosecution has examined one of the witnesses for the mazhar, non-examination of another witness Pakrisamy is neither fatal nor detrimental to the prosecution case. But, the trial Court has unfortunately found non examining the other witness Pakrisamy is fatal to the case of the prosecution, since the evidence of P.W.9 is not par with independent witness. The recovery of tainted money from the possession of the accused, is well proved. However, the trial Court failed to take note of the fact that having proved the factum of demand and acceptance through evidence of P.W.2 and P.W.3, the burden of rebutting the presumption is cast upon the accused person in this case. The presumption under Section 20 of Prevention of Corruption Act, is heavily weighed upon the accused, but the trial Court disregard to this provision had acquitted the accused. Any discrepancy in

the address of the house search by the prosecution is not material, since no incrementing evidence is collected during the search and relied upon by the prosecution. While so, the trial Court instead of considering the overwhelming evidence of P.W.9, P.W.2 and P.W.18, which corroborated each other, has erroneously held the accused not guilty.

7. The learned counsel for the respondent submitted that the place from which the money was given and recovered itself is under dispute. The allegation of demand of bribe for releasing of vehicle on 25.02.2009, is unbelievable. The evidence of P.W.4 and P.W.10 is that vehicle after confirmation of auction will be realised to the successful bidder only after completion of the formalities and by the order of the District Collector. In this case, the auction got confirmed on 25.02.2009, very same day the matter has been reported to the District Collector and sought permission for delivering of the vehicle. While so, the accused has no role to play in the release of vehicle. Whatever his duty in this regard, he has accomplished on 25.02.2009 itself. So demanding illegal gratification as award or motives, does not arise. The very foundation of the prosecution that the tainted money was received by the accused at room No.7, Get Well Hospital being demolished, through the cross examination of the witnesses, the trial Court has rightly relied upon contradiction elicited from the mouth of P.W.2, P.W.9 and P.W.18 to acquit the accused. Therefore, there is no perversity in the order of the trial Court requires interference.

8. The point for consideration is whether the evidence relied by the prosecution is suffice to hold the respondent guilty of demand and acceptance of Rs.5,000/- from P.W.2 as illegal gratification and whether the finding of the trial Court bristles with perversity warranting interference.

9. The star witness for the prosecution is P.W.2 Sekar who is the successful bidder in the auction held by the panchyat union office on 25.02.2009. In his complaint, P.W.2 has stated that bribe of Rs.5,000/- was demanded by the respondent on 25.02.2009 at about 5.30 pm and the respondent told him that he should pay the bribe money on 02.03.2009 at Get Well Hospital after 9.00 pm. This fact has been brought to light by way of complaint Ex.P2 dated 02.03.2009. The prosecution has no where examined or elicited why P.W.2 has not lodged the complaint immediately, but only on 02.03.2009. This may not be of much significance, if prosecution would have convincingly place before the trial Court, evidence that the delivery of vehicle was delayed only expecting bribe money. But from the evidence of the official of BDO office, it is clear that the respondent herein had approached the collector for release of vehicle on

the day of auction itself. So no motive would be attributed against the respondent that he had delayed the process expecting bribe. Yet another factor which has heavily weighed in the mind of the trial Court as well as this Court is that the admission of P.W.2 that he is the car driver of one Palanisamy, he has participated in the vehicle auction as per the instruction of the said Palanisamy. It is also admitted by P.W.2 that the said Palanisamy is P.A. To former MLA and there is previous animosity between the EX MLA and the accused. The said Get-Well Hospital where the respondent alleged to have demanded and received bribe appears is to be a complex where rooms are available for stay. In the cross examination, P.W.2 admits that Get-Well Hospital is not at all a Hospital and the person who was running the hospital was held by police and found to be a quack doctor. Though the prosecution has marked 34 documents, there is no document to show the existence of hospital by name Get Well Hospital which admits in-patient and it has rooms. There is no evidence to show there is Room No.7 in the said premises. The best evidence regarding the demand of bribe and acceptance could be P.W.10 who was found along with accused in Room No.7 of Get-Well Hospital, at the alleged time of receiving money. But P.W.10 has not corroborated the evidence P.W.2. Invariably P.W.2, P.W.9 and P.W.18 admitted that at the time of trap, the accused person was in drunken state. The trap laying officer also admits that he has send the accused person for medical examination. But, the medical report is not before the Court.

10. Taking note of all these lacuna in the prosecution case, the trial Court has rightly held that guilt of accused is not proved beyond doubt. On re appreciation of evidence, this Court confirms the view of the trial Court. Therefore, there is no ground to interfere with the finding of the trial Court. Hence the criminal appeal dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AT
To

1. The Special Judge cum Chief Judicial Magistrate
Villupuram.

2. The Deputy Superintendent of Police
Vigilance and Anti Corruption
Villpuram.

3. The Public Prosecutor
High Court, Madras.

4. The Section officer
Criminal Section
High Court, Madras(2 copies)

+1 CC to Mr.S. Sivakumar, Advocate sr 984.

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SP(12/01/2018)



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