Bail Slip

The Accused namely Abdul Hakim was directed to released on bail as per the Order of this Court dated 14/11/2014 in M.P.No.1 of 2014 in Crl.A.No.581/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :21.03.2018

PRONOUNCED ON :28.03.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.581 of 2014

Abdul Hakim .. Appellant/Accused

/versus/

The State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit-III,
Nandanam,
Chennai 600 035. ..Respondent/Complainant

Criminal Appeal is filed under Section 374 Cr.P.C., against the judgment of conviction passed in C.C.No. 95 of 2011 dated 05.11.2014 by the Special Judge for Prevention of Corruption Act Cases, Chennai.

For Appellant :Mr.M.Venkataraman, Sr.C.for
Mr.V.Krishnakumar
For Respondent :Mr.K.Prabakar, Addl.P.P.

J U D G M E N T

This appeal is against the judgment of conviction and sentence imposed by the Special Judge for Cases under Prevention of Corruption Act, Chennai, in C.C.No.95 of 2011, dated 05.11.2014.

2. The appellant herein held guilty for offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 for demand and acceptance of Rs.1,500/- from one Kumar as motive to transfer the name of the property tax assessee in

respect of the property settled in favour of the defacto complainant R.Kumar. The trial Court sentenced the accused to undergo one year imprisonment each and to pay a fine of Rs.1,000/- for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, in default to undergo 3 months imprisonment.

3. Case of the prosecution as spoken through its witnesses:-

Abdul Hakim, Bill/Tax Collector, Division-51, Zone-IV, Corporation of Chennai was approached by one R.Kumar, S/o Ramamurthy on 11.08.2008 at about 11.00 hours in his office at Chennai Corporation for name transfer of House Property at Door No.47/30A, Thiruvalluvar Street, Anbalagan Nagar, Sembium, Chennai-11 in the Corporation record. The defacto complainant R.Kumar was informed that there was arrears of House Tax to the tune of Rs.5595/-. He was also informed that he should pay arrears amount and also give bribe of Rs.1,500/-. Again when the defacto complainant R.Kumar met the accused Abdul Hakim on 18.08.2008 at about 01.00 p.m. at his office at Sembium, he reiterated his earlier demand and told the defacto complainant R.Kumar to come on the next day at about 01.30 p.m. to his office with a cheque for Rs.5,955/- towards payment of tax arrears and Rs.1,500/- in cash as illegal gratification.

4. Unwilling to pay the bribe, R.Kumar[PW-2] has approached the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Adayar and lodged a complaint marked as Ex.P2 narrating the demand made by the accused Adbul Hakim, Bill/Tax Collector. One R.Valsarajan, Deputy Superintendent of Police received the complaint and endorsed it Tr.R.Rajasrinivas, Inspector of Police(PW-8) to take up the investigation. Accordingly, PW-8 Tr.R.Rajasrinivas has registered the complaint on 19.08.2008 at 09.50 hours under Section 7 of Prevention of Corruption Act, 1988 and taken up the investigation.

5. Two witnesses namely Kamalakannan and S.Anbalagan were called to the Vigilance and Anti Corruption Office to stand as witness to the trap proceedings. On their arrival, entrustment mahazar was drawn after demonstrating the significance of phenolphthalein test. The trap money of Rs.1,500/- was smeared with phenolphthalein powder and entrusted to the defacto complainant PW-2[Kumar]. He and one of the decoy witnesses Thiru. Kamalakannan were asked to go and meet the accused at his office at about 12.45 p.m. The defacto complainant and the decoy witness namely, Kamalakannan [PW-3] were followed by the trap team led by the Vigilance Officer. On the way to the Corporation Office, PW-2 R.Kumar called the accused over phone at about 1.15 p.m. The accused informed PW-2 R.Kumar that he is not at his office so, directed PW-2 Kumar to meet him at Zonal Office-IV,

at about 03.30 p.m. The defacto complainant and the decoy witness namely, Kamalakannan reached the Zonal Office by 03.15p.m. and around 04.20 p.m., the accused came to the Zonal Office IV and occupied his seat at first floor. Then PW-2 [R.Kumar] handed over a Demand Draft for Rs.5,955/- and proper tax card to the accused. After receiving it, the accused issued two receipts marked as Exs.P4(series) and thereafter, demanded PW.2 whether he has brought the bribe money? PW-2[R.Kumar] answered in affirmative and handed over the tainted currency to the accused. The accused received it and after counting the same, he kept the tainted money inside the bunch of papers in a rose colour plastic folder on his table.

6. After receiving pre-arranged signal, the trap team entered into the first floor of Zonal Office IV, Madras Corporation at Ayanavaram, Anderson Road, where the accused received the bribe money from the defacto complainant. After interrogation, hands of the accused were dipped and tested with sodium carbonate solution. The solution colour turned pink proving the presence of phenolphthalein. The accused confessed receipt of bribe money from the defacto complainant and took the money kept in the rose colour plastic folder concealed between the photocopy of sale deed and property tax collection book. The recovery mahazar (Ex.P7) was prepared in the presence of the accused and witnesses Kamalakannan(PW-3) and Anbalagan, [not examined]. The hand wash solution sent to the laboratory, and the lab report (Ex.P9) confirmed the presence of phenolphthalein. After getting the sanction to prosecute(Ex.P1) from PW-1 final report was filed. The trial Court, on appreciation of the evidence of PW-1 to PW-9 and exhibits P1 to P20, held the accused guilty.

7. The learned Senior Counsel appearing for the appellant would submit that the trial Court had miserably failed to appreciate the evidence properly. The complaint against the accused borne out of mala fide and PW-2 defacto complainant had admitted in his cross examination that earlier there was a wordy quarrel between his father and the appellant.

8. The defacto complainant (PW-2) in the course of cross examination had disclosed the truth fact. While so, after cross examination, the prosecution has declared him as hostile. The evidence of PW-2 does not corroborate with the evidence of PW-3 who is supposed to have witnessed the demand and receipt of illegal gratification.

9. According to PW-2 and PW-3, the accused received the tainted money after counting the same. He kept it inside the rose colour plastic folder. The prosecution has not seized that folder and placed it before the Court for appreciation. In

alternate the xerox copy of the sale deed had been tested for the presence of phenolphthalein and the sodium carbonate solution in which the xerox copy of the sale deed dipped, was collected and sent for Forensic Analysis. The failure of the prosecution not producing the rose colour plastic folder before the Court for proper appreciation is fatal to the prosecution case.

10. The learned Senior Counsel also would submit that the appellant is only a Bill Collector and not responsible for name transfer. While so, the alleged demand to effect name transfer is highly doubtful. The explanation given by the accused person that the appellant and the father of the defacto complainant had a wordy quarrel earlier and to wreck vengeance the defacto complainant had concealed the tainted money inside the photocopy of the sale deed and kept on the table of the appellant, when he came to the office of the appellant to pay the property tax arrears.

11. The case of the prosecution that after receiving the cheque for Rs.5,955/- towards property tax arrears, accused issued 2 tax receipts and thereafter demanded and received the bribe money is unbelievable, Since the tax receipts marked as Ex.P4(series) are dated 20.08.2008. Whereas the prosecution witness PW-2 and PW-3 as well as PW-8 had deposed that on the day of trap i.e on 19.08.2008, before receiving the bribe money, the accused issued the receipts which are marked as Ex.P4 (series).

12. Further, it is also contended by the learned Senior Counsel appearing for the appellant that while PW-2 admits in his cross examination that after receiving the receipts, he shock hands with the appellant and thereafter, left the room of the appellant. Thus, there is every possibility of contacting the phenolphthalein when the defacto complainant admits in the cross examination that he was frequently touching the money to ensure it is safe in his pocket.

13. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the demand of illegal gratification is expressly and specifically stated in the complaint Ex.P2. Based on the complaint, trap was laid. The accused demanded and accepted the money from PW-2 in the presence of PW-3. The evidence of PW-2 and PW-3 corroborated each other. and in The recovery of the tainted money kept inside the rose colour plastic folder concealed between the photocopy of the title deed and the tax collection book is also proved by the prosecution. In such circumstances, it is the burden of the accused to rebut the presumption that the money recovered from him is not illegal gratification. Having failed to rebut the

statutory presumption, the judgment of the trial Court is in accordance with law and needs no interference.

14. Point for consideration:

Whether the finding of the trial Court that the prosecution has proved beyond doubt that the appellant/accused had demanded and received the bribe, is correct in the light of the evidence available?

15. On reading of the complaint marked as Ex.P2, it appears that the defacto complainant R.Kumar has gone to the office of Chennai Corporation, Division-51 near Venus Theatre on 11.08.2008 for transferring the property tax record in his name, since his father has settled the property in his name vide sale deed dated 27.04.2006. On that day, when the defacto complainant met the accused, he was informed that he has to pay house tax arrears of Rs.5,955/-. Further, for name transfer the defacto complainant asked him to sign the name transfer form. Accordingly, he signed in the blank paper and gave it to the defacto complainant.

16. It is also alleged in the complaint that the accused demanded Rs.1,500/- as bribe for arranging the name transfer. Again on 18.08.2008 at about 1.00 p.m., the defacto complainant has gone to the Divisional Office and met the appellant/accused. The appellant has reiterated the demand of Rs.1,500/- as bribe to effect the name transfer and also told the defacto complainant that he should come at 1.30 p.m., on 19.08.2008 and give the money to him. Since the defacto complainant had no intention of giving bribe for name transfer, he has gone to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Adayar on 19.08.2008 at 09.30 hours.

17. The evidence of PW-2 while substantially go with his written complaint. In respect of the events happened on the day of trap it is very doubtful and without any corroboration. In the chief examination of PW-2, he has deposed that he and Kamalakannan (PW-3) went to the office of the accused on the day of trap. Whereas. in the cross examination, he has deposed that he and Anbalagan [not examined] went to the office of the accused. For the said reason, the prosecution has declared him as hostile. It is not only the said contradiction, there are other facts which have been elucidated during the cross examination of PW-2 makes the case of the prosecution weak. One of the admission is that, he was frequently touching the tainted money to ensure its before he safely gave it to the accused and also his admission that he shook his hands with the accused after receiving the receipt. This gives a possible explanation for the presence of phenolphthalein in the hands of the accused.

18. It is the case of the prosecution that the tainted money was recovered from the rose colour plastic folder kept on the table of the accused/appellant. The said money was concealed in between the photocopy of the sale deed and tax collection book. The prosecution has produced the photocopy of the sale deed and the tax receipt book but had not produced the rose colour plastic folder. There is possibility of concealing the tainted money in between the sale deed copy and leaving it on the table of the accused as contended by the learned Senior Counsel appearing for the appellant.

19. This explanation being plausible and the date of receipt found in Ex.P4(series)does not tally with the version of the prosecution that on receiving the cheque for Rs.5,955/- the accused/appellant issued two receipts Ex.P4(series) and thereafter demanded and received the tainted money from the defacto complainant. Seizure mahazar and the evidence of PW-8 also indicate that immediately after the trap proceedings, the receipt and the receipt book were recovered. Ex.P4(series) receipts was issued just before the trap. The trap proceedings completed by 7.30 P.M on 19.08.2008. Whereas the receipts marked as Ex.P4 (series) is dated 20.08.2008. The seal of the Court on Ex.P4(series) and other documents indicate that these documents were forwarded to the Court only on 21.08.2008, though they were recovered on 19.08.2008 before 07.30pm.

20. Taking note of the fact that the receipts for tax is dated 20.08.2008 and the evidence of PW-5 [Tr.K.Thangapazham] who was serving as Assistant Revenue Inspector in the Divisional Office that the day of trap the trap laying officer recovered the tax receipt book, the cheque given by the defacto complainant was handed over to him to prepare receipts. He in turn gave the receipt book to the Office Manager to receive the cheque and prepare the receipts. From the date found in Ex.P4 (series), it is certain that the receipt was not prepared before the trap, but only after the trap. While so, the evidence of the prosecution as spoken by PW-2 and PW-3 that the accused received the cheque and issued tax receipts and thereafter demanded bribe and obtained it gets falsified.

21. No doubt, by phenolphthalein test, the prosecution has proved the fact that the accused/appellant had contacted phenolphthalein. Whether it was due to handling the tainted currency or by contacting the hands of PW-2 is not sure. While so, when the money was recovered from the folder concealed in between the bill book and the photocopy of the tile documents, whether it was kept with the knowledge of the appellant or without his knowledge is also not sure.

22. While the prosecution has not proved its case beyond reasonable doubt in respect of the demand and acceptance, the presumption under Section 20 of the Prevention of Corruption Act cannot be drawn. Proof of demand and acceptance beyond reasonable doubt is sine qua non to draw the presumption under Section 20 of the Prevention of Corruption Act. When the prosecution is unable to discharge the primary burden of demand and acceptance beyond doubt, the case of the prosecution is bound to fail.

23. Further, the specific case of the prosecution centres on demand of illegal gratification by the accused/appellant for effecting name transfer. It is also the case of PW-2 in his complaint marked as Ex.P2 that when he met the accused/appellant on 11.08.2008, the accused obtained signature in the name transfer form and kept it with him. PW-8 the trap laying officer has deposed that during the search of the accused table he has recovered the records including the application for name transfer given by PW.2 which is marked as Ex.P14. Perusal of Ex.P.14 we find except the ward number, division number and signature of the defacto complainant, the other columns in the application is blank and unfilled. More particularly, the name of the transferee is neither filled up nor his signature is obtained. Without the consent or signature of his father, PW-2 contends that he made a request for name transfer to the bill collector who is not the person competent to do so and for the said purpose, the bill collector demanded Rs.1,500/-. Further the learned counsel for the appellant would submit that till date the property tax assessment stands in the name of Ramamurthy, the father of PW-2. This improbablise the prosecution case. Since the contradiction and the explanation given by the accused not been properly considered by the trial Court, it requires interference. Accordingly appeal is allowed.

24. In the result, this Criminal Appeal is allowed. The judgment of conviction passed in C.C.No. 95 of 2011 dated 05.11.2014 by the Special Judge for Prevention of Corruption Act Cases, Chennai, is hereby set aside. The Fine amount if any paid by the appellant shall be refunded to him. Bail bond executed by him shall stand cancelled. The disposal of the material objects is as per the directions of the trial Court.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for Prevention of Corruption Act Cases,
Chennai.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit-III,
Nandanam,
Chennai 600 035.

3.The Ivth Additional Sessions/Special Court,
Chennai.

4.The Director General of Police,
Mylapore, Chennai-600004.

5.The Public Prosecutor,
High Court, Madras.

6.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/S.V.Krishnakumar, Advocate Sr.23841

Crl.A.No.581 of 2014

rr[co]
srg 22/05/2018