

Bail Slip

The petitioner/Accused namely M.Narayanasamy, S/o.Munusamy, aged about 55 years is directed to be released on bail as per order of this Hon'ble Court dated 04.12.2014 made MP.no.1 of 2014 in CrI.A.615/2014 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :26.06.2018

Pronounced on :04.07.2018

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.615 of 2014

M.Narayanasamy ... Appellant/Accused

/versus/

State by:

Inspector of Plice,

CBI, ACB, Chennai,

(RC No.MA1 2012 A 0042) ... Respondent/Complainant

Criminal Appeal is filed under Section 374 of the Criminal Procedure Code praying to set aside the order of conviction passed against the accused/appellant in Spl.C.C.No.1 of 2013 on the file of the Court of Sessions Judge and Special Judge at Karaikkal dated 21.11.2014 and acquit the accused.

For Appellant :Mr.Haja Nazirudeen, Sr.C., for
Mr.R.Tholgappian

For Respondent :Mr.K.Srinivasan, Spl.PP(CBI)

J U D G M E N T

Thiru.M.Narayanasamy, the appellant herein, while serving as Head Constable at Karaikal(PS) was prosecuted for receiving Rs.3000/- from one Mohamed Refay as illegal gratification on 27.09.2012. Being a public servant he was tried before the Court of Sessions Judge and Special Judge at Karaikal in Spl.C.C.No.1 of 2013 for the offence under Sections 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. Facts of the case in nutshell:

A Bajaj Pulsar motorcycle bearing Reg.No.PY-02-F-6160 owned by Thiru.Madhan Babu[PW-3], driven by Thiru.Mohamed Refay [PW-2] met with a road accident causing injury to a 8 years old boy on 21.09.2012. Thiru.R.Thiruvengadam [PW-16] the uncle of the victim boy came to the Karaikal Police Station on 25.09.2012 and lodged a complaint about the accident. Thiru.M.Mohamed Refay [PW-2], who caused the accident, Thiru.Selva Ganesh, who was pillion rider at the time of accident and Thiru.Madhan Babu [PW-3], the owner of the motorcycle were called to the Karaikal Police Station for enquiry. The appellant tried to negotiate and settle the issue. While the appellant told PW-2 that he will settle the matter for Rs.4,500/-, the victim family initially demanded Rs.10,000/- and later reduced to Rs.7,000/-. However, the owner of the vehicle Thiru.Madhan Babu was willing only to meet out the actual medical expenses. Since the negotiation did not fructify, complaint Ex.P4 was taken on file under Crime No.131 of 2012 under Section 279 and 337 of the Indian Penal Code and First Information Report (Ex.P26) was registered. On 26.09.2012 when PW-2 went to the police station, the appellant demanded Rs.3,000/- as bribe to release the vehicle. Hence, PW-2 gave a complaint (Ex.P26) to CBI Inspector. Based on his complaint, the accused was trapped on 21.09.2012 for receiving bribe of Rs.3,000/- from PW-2. The tainted money M.O.1 series was recovered from his table drawer.

3. The trial Court on examining 21 witnesses, 73 exhibits and 3 material objects for prosecution held the accused guilty of both the charges and sentenced him to undergo 6 months Simple Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo one year Simple Imprisonment and to pay a fine of Rs.3,000/- in default to undergo 6 months Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. Aggrieved by the said conviction and sentence, the present appeal is filed on the ground that the judgment of the trial Court is erroneous. The evidence of the prosecution is not cogent and relevant to hold the accused guilty. The evidence of PW-2[Mr.M.Mohamed Refay] does not attract the ingredients of the offence mentioned in the charges.

5. The learned Senior Counsel appearing for the appellant would submit that the receipt of Rs.3,000/- from PW-3 [Thiru.Madhan Babu] was for paying compensation to the victim boy. The said receipt and recovery cannot be considered as an illegal gratification. On 27.09.2012 Thiru.Mohamed Refay (PW-2) and others came to the police station to pay compensation to the victim boy. The accused/appellant received the money on behalf of the victim and it was not illegal gratification for release of the vehicle. In the cross examination, Thiru.Madhan Babu[PW-3] had candidly admitted that he decided to pay a sum of

Rs.3,000/- to the victim boy, since he was his relative. Thiru.Thiruvengatam [PW-16] who is the maternal uncle of the victim boy, has admitted that on 27.09.2012 he was asked to come to the police station to receive the compensation. When he came to the police station at 7.00p.m, there was huge crowd in the station premises. He was told that CBI enquiry is going on, therefore, he returned back.

6. The learned Senior Counsel appearing for the appellant would further submit that the complaint is a motivated one without any truth in it. The manner in which the First Information Report registered is not in accordance with law. The authority accorded sanction to prosecute the appellant had not considered the materials placed before him properly. Without applying his mind, he has accorded sanction mechanically. PW-2 [Thiru.M.Mohamed Refay], who caused injury to Swaminathan had pleaded guilty before the criminal Court. The appellant herein, who registered the complaint of the said motor accident had been penalised by the false complaint given by Thiru.Mohamed Refay (PW-2) at the instigation of his friend Thiru.Madhan Babu (PW-3) the owner of motorcycle bearing Reg.No.PY-02-F-6160. Aggrieved by the act of the appellant registering the motor accident case against Thiru.Mohamed Refay in accordance with law and retaining the vehicle for motor vehicle inspection, under the guise of paying compensation to the victim's family, PW-2 and PW-3 had trapped the appellant. The trial Court, without considering the proximity between PW-3 and PW-2 and their ulterior motive to lodge false complaint against him, had erroneously held him guilty.

7. To support of his submission, the learned Senior Counsel appearing for the appellant relies upon the following judgments:

1.C.M.Girish Babu v. CBI, Cochin, High Court of Kerala reported in (2009) 3 SCC 79;

(2)B.Jayaraj v. State of Andhra Pradesh reported in (2014)13 SCC 55; and

(3)TK.Ramesh Kumar v. State Through Police Inspector, Bangalore reported in (2015)15 SCC 629.

8. Per contra, the learned Special Public Prosecutor representing the CBI would submit that the accused M.Narayanasamy, while working as Head Constable at Karaikal Traffic Town Police Station, received a telephonic message from the General Hospital about the road accident involving the motorcycle bearing Reg.No.PY-02-F-6160 causing injury to 8 years old boy by name Swaminathan. Thiru.R.Thiruvengadam(PW-16) maternal uncle of the victim boy took the victim to the General Hospital for treatment as out patient. Later, the boy was admitted in a private hospital at Kumbakonam for further treatment. After his recovery, PW-16 came to the police station

on 25.09.2012 and gave a written complaint to the appellant M.Narayanasamy, who was the Head Constable at Karaikal Traffic Town Police Station at that point of time. The appellant instead of registering First Information Report immediately after the telephonic information received from the General Hospital or after the receipt of the written complaint from PW-16 on 15.09.2012 called Thiru.Mohamed Refay (PW-2) and Thiru.T.Madhan Babu(PW-3) to the police station and demanded Rs.10,000/- and reduced it to Rs.7,000/- to let them off without registering the First Information Report. On the refusal to give that money, he registered a case under Crime No.131 of 2012, seized the vehicle and documents. To release the said vehicle, he demanded Rs.3,000/-. Since Thiru.Mohammed Refay felt that the accident did not happen due to his fault, he was not inclined to bribe and get the vehicle released. Therefore, he contacted CBI office at Chennai and gave the complaint dated 27.09.2012.

9. Based on the complaint(Ex.P4), after preparation of the entrustment mahazar(Ex.P5), the defacto complainant Thiru.Mohamed Refay(PW-2) along with shadow witness Thiru.R.Ajay Krishnan[PW-4] and the vehicle owner Thiru.T.Madhan Babu [PW-3] met the appellant at Karaikal Town Police Station at about 17.00 hours on 27.09.2012. The appellant was not in his seat at that time. They waited for his arrival. The appellant arrived at the police station about 18.10 hours. He saw Thiru.Mohamed Refay and others waiting for him. He called Thiru.Mohamed Refay to come aside and asked whether he has brought the money demanded. When he answered in affirmative, he directed the station writer Mr.Raja (PW-8) to complete the formalities. Accordingly, Thiru.Mohamed Refay and his friends those who stood sureties for bail and release of vehicle, complied all the formalities with the station writer (PW-8) and came back to the appellant. The appellant again demanded and received a sum of Rs.3,000/- in the presence of Mr.Ajay Krishnan the shadow witness (PW-4). After counting the money with his hands, he kept the money in the right side table drawer and informed Thiru.Mohamed Refay that he can take back the vehicle on the next day after completion of motor vehicle inspection. Thereafter, the trap team entered into the police station on receipt of the pre arranged signal. Accused/appellant hands were subjected to sodium carbonate-phenolphthalein test and found positive. They recovered the tainted money from the table drawer of the accused.

10. Through the testimony of PW-1 to PW-21 and 73 exhibits marked in support of the prosecution besides 3 material objects which includes the tainted currency recovered from the accused, the prosecution has proved the above facts cogently without any doubt in its probative value. There is no inconsistency or contradiction in the case of the prosecution regarding demand, acceptance and recovery. The trial Court after testing the evidence had come to a right conclusion of holding the appellant guilty. The explanation adduced by the accused person for

recovery of tainted money of Rs.3,000/- from his possession is neither plausible nor possible. The deposition of Thiruvengadam [PW-16] that he came to police station on 27.09.2012 at 07.00 p.m., to receive the compensation is uncorroborated only an afterthought. Stray statement without corroboration does not carry any merit for consideration.

11. Point for consideration:

The point involved in this case is whether the explanation given by the accused/appellant for receipt of the tainted money is sufficient enough to rebut the presumption fasten on him under Section 20 of the Prevention of Corruption Act, 1988?

12. PW-2 [Thiru.M.Mohamed Refay] is the defacto complainant. His deposition narrates about the accident occurred on 21.09.2012 and the telephonic call received from the appellant on 25.09.2012. It discloses the fact that PW-2 was directed by the appellant to come on 26.09.2012 and meet him along with the vehicle and RC book. When he went to the police station along with his friend Thiru.Selva Ganesh, he saw the victim boy and his relative Thiru.Thiruvengadam present in the police station. There was negotiation to settle the matter without registering the complaint. While the victim's family demanded Rs.10,000/-, the appellant told him that he will settle the matter for Rs.4,500/-. Thereafter, the appellant has told the parties to talk among themselves and to settle the issue. Thiru.Thiruvengadam[PW-16] who represented the victim refused to settle below Rs.7,000/-. When PW-2[Thiru.Mohamed Refay] offered to meet out the medical expenses of the victim boy, it was not accepted by Thiru.Thiruvengadam[PW-16]. Therefore, the appellant had registered the First Information Report and sent PW-2 [Thiru.Mohamed Refay] and his friend Selva Ganesh to bring sureties to release the vehicle. On the next day at 09.45 a.m., when PW-2 along with Thiru.Rajesh, Thiru.Zahir Hasan, Thiru.Ashok and Thiru.Ukkas went to the police station, the accused was not in the station and they were informed that the accused has gone for rounds. The defacto complainant contacted the accused over cellphone. After confirming presence of sureties, the appellant had enquired how much money he has brought. When PW-2 told that he has brought Rs.500/-, the accused has demanded Rs.3,000/- to release the vehicle. Therefore, PW-2 had contacted the owner of the vehicle Thiru.Madhan Babu(PW-3). In turn, Thiru.Madhan Babu[PW-3] had contacted CBI official and on their instruction, PW-3 and PW-2 had met the CBI officials at Nagapattinam on 27.09.2012. Ex.P4 written complaint of PW-2 has been received and after registration of the First Information Report, Mr.R.Krishnamorthy, Inspector of Police (PW-19) has been entrusted to lay the trap.

13. The evidence of PW-2[Thiru.Mohammed Refay], PW-3 [Thiru.Madhan Babu] and PW-4[Thiru.R.Ajay Krishnan] speaks about the pre-trap proceedings and entrustment mahazar [Ex.P5]. Thereafter, the decoy witnesses and the trap team had gone to Karaikal police station. On the arrival of the accused to the police station at about 06.10 p.m., the money has been given to the accused on his demand. This event is spoken through PW-2 [Thiru.M.Mohamed Refay] and PW-4[Thiru.R.Ajay Krishnan]. The appellant/accused also does not deny the receipt of money from PW-2[Thiru.Mohamed Refay] and the recovery of the same from his drawer. The explanation offered by the accused/appellant is that this money was meant for compensation to the victim boy. Since the recovery is proved, the question of demand and acceptance whether was for compensation to the victim or gratification and not legal remuneration is to be tested in this case. If the explanation offered by the appellant is not supported by preponderance of probabilities then the presumption under Section 20 of the Prevention of Corruption Act has to be drawn against the appellant.

14. In this regard, the circumstances under which the receipt of money by the appellant gains relevance. Ex.P33 is the intimation of accidents and injuries to Police sent by the General Hospital, Karaikal. This exhibit shows that on 21.09.2012 at 10.00 p.m., Swaminathan, who was aged about 8 years old boy had been brought to the hospital with alleged history of road traffic accident near Perumal Koil Street hit by a pulser motorcycle. The out patient Doctor has observed abrasion on the chin of the victim. This document further indicates that the Town Police Station have been intimated about this case through phone. Ex.P44 is the General Diary maintained at the Traffic Town Police Station, Karaikal. In the General Diary, this Court finds that the intimation of the above said road accident has been recorded on 21.09.2012 at 01.45 hours. Though the intimation has been received and recorded on the night of 21st/22nd.09.2012, the First Information Report has come to be registered only on 25.09.2012. This has happened after Thiruvengadam(PW-16) visited the police station in person and gave the written complaint Ex.P27. Based on the written complaint, First Information Report [Ex.P26] has been registered by Karaikal Traffic Town Police Station.

15. From the evidence of PW-2, we find that PW-2 [Thiru.Mohamed Refay] was called to the police station by this appellant on 25.09.2012. After his attempt to settle the matter without registering the complaint failed, the appellant has registered the First Information Report with delay of 4 days. The General Diary entry for 25.09.2012 also finds place about the registration of this First Information Report at 18.30 hours and thereafter, at about 18.30 hours, the appellant has taken the matter for investigation.

16. It is the case of the prosecution through PW-2 [Thiru. Mohamed Refay] that on 25.09.2012 after the failure of negotiation, the accused/appellant registered the complaint and allowed PW-2 [Thiru. Mohamed Refay] and his friend Selva Ganesh to go and come on the next day with sureties. PW-3 [Thiru. Madhan Babu] also in his chief has said that he joined PW-2 [Thiru. Mohamed Refay] and Thiru. Selva Ganesh at police station on 25.09.2012. His vehicle was detained by the appellant and he was asked to come on the next day along with documents and sureties.

17. The above said evidence sufficiently prove that for the road accident occurred on 21.09.2012. In spite of intimation received from the General Hospital, First Information Report was not registered immediately only after failure of settlement talk on 25.09.2012, the complaint has been received from PW-16 [Thiru. Thiruvengadam] and the First Information Report [Ex.P26] has been registered. The Bail Bonds Register, Arrest Memo would show that on 27.09.2012 the formalities of arrest and seizure of vehicle had been recorded by the station Writer Thiru. K. Raja examined as PW8.

18. It is an admitted fact that there was negotiation to settle the matter without registering the complaint for which the victim side has demanded Rs.10,000/- and reduced it to Rs.7,000/-. The appellant herein had suggested to settle the matter by paying Rs.4,500/- which the defacto complainant had declined. Only thereafter, the registration of the First Information Report, seizure of the vehicle, arrest and execution of bail bond had happened. When the negotiation had broken on 25.09.2012 leading to registration of First Information Report, the later event which has taken place on 26.09.2012 and on 27.09.2012 has no relevance to the settlement or negotiation. The demand as spoken by PW-2 and PW-3 could be only for the release of the vehicle which has been retained by the accused/appellant in connection with the road accident. Taking advantage of the earlier negotiation to settle the matter prior to registration of the First Information Report, the appellant herein tries to project as if the money he received on 27.09.2012 was for compensation. This explanation cannot be a plausible explanation because if really PW-3 [Thiru. Madhan Babu] was intended to give some compensation to the victim as he has admitted in his cross examination, he would give that to the victim directly since the victim was not an unknown person to him. Both hail from the same place and also relative to each other. He need not have gone to the police to pay the compensation money through the appellant. Further, if PW-16 went to the police station on 27.09.2012 to receive the compensation since he was asked to come to the police station by the appellant is true, then this appellant should have not received the money from PW-2, but he should ask him to wait till the arrival of PW16. Contrarily the appellant had received money and kept in the table drawer.

19. Therefore, the explanation given by the appellant for the receipt of the money is not a plausible explanation. The trial Court has rightly rejected the explanation and held the accused guilty. This Court, on re-appreciation of the evidence, finds no reason to interfere with the judgment of the trial Court. Hence, the Criminal Appeal is liable to be dismissed.

20. In the result, the Criminal Appeal is dismissed. The judgment of conviction passed against the accused/appellant in Spl.C.C.No.1 of 2013 on the file of the Court of Sessions Judge and Special Judge at Karaikkal dated 21.11.2014 is hereby confirmed. The trial Court is directed to secure the appellant to serve the remaining period of sentence. The Substantial sentences of imprisonment shall to run concurrently.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Sessions Judge and Special Judge at Karaikkal
- 2.The Inspector of Police, CBI, ACB, Chennai.
- 3.The Special Public Prosecutor for CBI Cases, High Court, Madras.
- 4.The Chief Judge, Pondicherry.
- 5.The Public Prosecutor, Pondicherry.

+1cc to Mr.R.Tholgappian, Advocate Sr.No.43481

NMI (CO)
sm:16.7.2018

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judgment made in
CrI.A.N.615 of 2014