BAIL SLIP

The Appellant/Accused S.Gurumoorthy S/o. G.Sakkarai was enlarged on bail in MP.1/2014 in Crl.A. No.652/2014 dated 19.12.2014 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2018	Pronounced on: 01.08.2018

Coram:

The Honourable Dr.Justice G.JAYACHANDRAN

Criminal Appeal No.652 of 2014

S.Gurumoorthy ... Appellant/Accused

/versus/

Inspector of Police,
SPE:CBI:ACB:Chennai,
[R.C.MAI 2011 (A) 0002]. ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code 1973, against the conviction and sentence passed by the learned II Additional District Judge/Special Judge (C.B.I Cases) Coimbatore by judgment dated 11.12.2014, made in C.C.No.6 of 2011, convicting the appellant/accused herein, to undergo 3 years Rigorous Imprisonment under Sections 7 of Prevention of Corruption Act 1988 and imposed a fine of Rs.5,000/-, in default to undergo simple imprisonment for 6 months, to undergo 3 years Rigorous Imprisonment under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and imposed a fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.

For Appellant : Mr.K.Shanker

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor [C.B.I]

J U D G M E N T

This appeal is directed against the judgment of sentence and conviction made in C.C. 6/2011 by the aggrieved accused Mr.S.Gurumoorthy.

2. The appellant S.Gurumoorthy, a public servant employed as Assistant Director (Handicrafts), Handicrafts Marketing and Service Extension Centre, Salem. He was in-charge of processing the applications for reimbursement under Ambedkar Hast Shilp Vikas Scheme.

3. The defacto complainant, Mr. S.K.Babu, is the Managing Trustee of M/s. ECO Green unit, No 44, 'Divine', Sri Lakshmi Nagar, Ganapathy, Coimbatore.

4. Under Ambedkar Hast Shilp Vikas Scheme, M/s.Eco Green Unit [NGO] was one of the Agencies selected by the Office of Development Commissioner, (Handicrafts) New Delhi. A grant-in-aid of Rs.1,50,000/- was sanctioned vide order dated 11.02.1010. First instalment of Rs.75,000/- was also released during April 2010 to meet out non-recurring expenditures for base line survey and mobilisation of artisans in Banana and Sisal Fibre Crafts at Ganapathy area, Coimbatore District, Tamilnadu.

5. On 01.01.2011 S.K.Babu (PW-3) after getting Charted Accountant certificates etc., met the accused and spoke about reimbursement. The accused after going through the report told PW-3 that it requires certain corrections.

6. On 03.01.2011, the accused called PW-3 over phone and demanded illegal gratification of Rs.5,000/- for processing the report for reimbursement of Rs.75,000/-. Also told PW-3 to come and meet in person with all the documents and bribe money of Rs.5,000/- on 05.01.2011.

7. On 04.01.2011, PW-3 called the accused to inform him that the documents are ready and to confirm whether he can come on 05.01.2011. The accused again demanded Rs.5,000/- bribe to be given along with the documents when PW-3 come on 05.01.2011.

8. PW.3 contacted Superintendent of Police over phone and explained to him above the demand of illegal gratification by the accused. The Superintendent of Police had told him to meet one Lawrence on the next day and give his written complaint to him. Accordingly, on 05.01.2011, PW.3 [S.K.Babu] defacto complainant met G.Lawrence [PW.5] at Salem Steel Plant Guest House and gave his complaint Ex.P.4. Based on the complaint, first information report Ex.P.20 was registered. Two independent witnesses were arranged by G.Lawrence [PW.5] to be the witness for trap proceedings. After preparation of entrustment mahazar [Ex.P.5] in the presence of the witnesses bribe money of Rs.5,000/- smeared with phenolphthalein was handed over to S.K.Babu [PW.3].

9. S.Siva Kumar [PW.4] accompanied S.K.Babu [PW.3] to oversee the transaction. At about 1.30 pm, S.K. Babu [PW.3] and S.Siva Kumar [PW.4] went to the office of the accused at the first floor of the building. The other members of the trap team were keeping surveillance outside. The accused S.Gurumoorthy saw S.K.Babu [PW.3] and asked him to wait outside the cabin. While S.K. Babu [PW.3] and S.SivaKumar [PW.4] were waiting outside the cabin, the accused left the office by 2.00 PM and returned back to his cabin at about 3.30 PM. Called S.K.Babu [PW.3] at 3.45pm received the documents from PW.3 and after scrutinizing it, demanded the bribe money Rs.5,000/- and accepted the same from S.K.Babu [PW.3]. S.Sivakumar [PW.4] who was waiting outside the cabin of the accused could able to see the transaction through the transparent glass of the cabin. After receiving the pre-arranged signal, the trap team led by Lawrence [P.W.5] had entered the cabin of the accused. The phenolphthalein test was conducted in the hands of the accused. The colour of the sodium carbonate solution turned into pink. The accused took out the tainted money from his pant pocket and handed over. The recovery mahazar Ex.P.12 along with rough sketch Ex.P.13 were prepared. The documents from the accused pertaining to the reimbursement of grant to M/s. Eco Green Unit was recovered.

10. In the trial, S.SivaKumar [PW.4] the accompanying witness was treated hostile since he has deposed that when the accused was called to explain about the receipt of the money, he told that, he received the money as loan from S.K.Babu [PW.3]. Further, he has also deposed that the phenolphthalein test in the hands of the accused was conducted. Subsequent to the handing of the money as per the direction of the Trap Laying Officer.

11. As per explanation, by suggesting the prosecution witnesses in the cross examination and in reply to Section 313 questioning and through documents marked on the side of the accused as Ex.D.1 to Ex.D.9, the defence theory is that, the accused refused to reimburse the grant, since S.K.Babu [PW.3] organisation M/s. Eco Green Unit has not satisfied the conditions for reimbursement namely the Artisans in the beneficiary list must belong to the same cluster area and atleast 80 % of the members of the cluster should be benefited in the scheme. The accused found that some of the members does not fall within the same cluster (Ganapathy area) and less than 80% of the members are shown as beneficiaries. Hence refused to process the application.

12. Disgruntled by the said objection, false complaint has been given. After the trap proceedings, on the advice and

instruction of K.Dhanarajan [PW.8] the defacto complainant has produced different set of beneficiaries list which form part of D2 to D7 and had got the reimbursement.

13. The trial Court has accepted the case of the prosecution, rejected the explanation given by the accused. Convicted the accused to undergo 3 years R.I and fine of Rs.5,000/- in default to undergo 6 months S.I for offence under Section 7 and to undergo 3 years R.I imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months S.I for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

14. Points for consideration

> Whether the trial Court right in holding that prosecution has proved the demand and acceptance of illegal gratification beyond reasonable doubt and whether the explanation provided by the accused is not a plausible explanation?

15. Demand:

In the written complaint [Ex.P.4] given by S.K.Babu [PW.3] the demand of illegal gratification from the accused person was made on 03.01.2011 when the accused Gurumoorthy called him over phone and told that while submitting the report on 05.01.2011, he should pay Rs.5,000/- as bribe. Then only he will process the report for reimbursement of Rs.75,000/-. The complaint further reads that on the next day dated [04.01.2011]. He has contacted Superintendent of Police, C.B.I/ACB, Chenani over phone and on his advice, the written complaint is given.

16. The First Information Report need not be encyclopaedia of the crime. Any information regarding cognizable offence is sufficient to set the law into motion. The veracity of the complaint has to be tested in the course of investigation and later in trial. S.K.Babu [PW.3] who gave the written complaint marked as Ex.P.4 had deposed that, the first demand of illegal gratification by the accused was over phone on 03.01.2011. The second demand was when the defacto complainant S.K.Babu called the accused over phone on 04.01.2011 to inform that the reports are ready and to know whether shall he come on 05.01.2011. The second demand on 04.01.2011 spoken in the witness does not form part of the complaint.

17. Before proceeding with the trap process, S.K.Babu [PW.3] called the accused over phone as instructed by G.Lawrence [PW.5], Trap Laying Officer. The trap team present at the Salem Steel Plant Guest House, heard the conversation between S.K.Babu [PW.3] and the accused Gurumoorthy over the speaker phone in the

cell phone. This is the third occasion the accused demanded bribe according to the deposition of PW.8.

18. The case of the prosecution is that, the accused reiterated the demand of Rs.5,000/- during the said conversation and the same was heard by the witnesses present. This version of the prosecution spoken by S.K.Babu [PW.3] defacto complainant and G.Lawrence [PW.5], Trap Laying Officer. The independent witnesses namely S.Siva Kumar (PW.4) has not deposed anything about PW.3 calling the accused over phone, before the trap process. The other witness Aloke Pratheep was not examined by the prosecution.

19. The prior demands alleged to have been made by the accused persons on 03.01.2011 is spoken by S.K.Babu [PW.3] and form part of the complaint. Whereas, the alleged demand made on 04.01.2011 is an embellishment found in the PW.3 deposition but conspicuously absent in his complaint. The demand on 05.01.2011 before trap is spoken by S.K.Babu [PW.3] and G.Lawrence [PW.5], trap laying officer but not corroborated by the independent witness PW.4 (Siva Kumar) or others.

20. Acceptance:

As far as, acceptance of tainted money on 05.01.2011,. The case of the prosecution is that, the trap team went to the office of the accused at about 1.30 pm. The accused was at his cabin at that time. He saw S.K. Babu [PW.3] and asked him to wait. S.Siva Kumar [PW.4] who accompanied S.K.Babu [PW.3] was standing outside the cabin. By 2.00 PM, the accused left his cabin and came again to his cabin only by 3.30 PM. Therefore, even according to the prosecution though the accused saw his bribe giver at 1.30 pm, he did not obtained the bribe from him but left his cabin by 2.00 PM and came back only at 3.30 PM. Thereafter he called the bribe giver inside his cabin, received it along with the reports. There are discrepancies between the prosecution witnesses S.K.Babu [PW.3], S.SivaKumar [PW.4] and G.Lawrence [PW.5] regarding what they were doing between 2.00 pm to 3.30 pm when the accused was not in his cabin. When the money alleged to have been obtained by the accused, S.Sivakumar [PW.4] was standing outside the cabin and was not along with PW.3. He did not heard the conversation but only saw the sign language.

21. Recovery

The tainted money according to S.K.Babu [PW.3] was taken out from the pant pocket of the accused by S.SivaKumar [PW.4], on the instruction of Lawrence [PW.5]. Contrarily, S.Sivakumar [PW.4] had deposed that C.B.I Officer asked

Gurumoorthy the accused to take out the money. In response to that, the accused took the money from his pant pocket and handed over to the C.B.I Officer. This witness had also deposed that the accused Gurumoorthy explained to the C.B.I Officer that this money was the loan amount received from S.K.Babu (defacto complainant). This part of evidence is totally contrary to the prosecution case. Before the trial Court the Public Prosecutor has sought permission of the Court to declare this witness as hostile witness. Accordingly PW.4 has been declared as hostile and permitted to cross examine. After one month, the said witness has been cross examined and during the cross examination, he has turned turtle and has said that he took out the money from the accused pant pocket. This makes the evidence of PW.4 unreliable.

22. The comparative reading of S.K.Babu [PW.3] testimony and the written complaint, the embellishment in the deposition of PW.3 is found patent. This coupled with hostility found in the deposition of PW.4, does not lead to the conclusion that the prosecution has proved the case of demand and acceptance of bribe beyond reasonable doubt.

23. The attempt of the prosecution to prove that there was telephonic conversion between the defacto complainant and the accused on 03.01.2011, 04.01.2011 and 05.01.2011 had also faild and become a aborted and futile exercise, in view of the fact that the investigating Officer has collected the call details of the phone held in the name of accused only but there is no material evidence to show the corresponding records of the defacto complainant phone.

24. Explanation Offered by the accused.

The accused admits that he is responsible to scrutinize the report of the beneficiaries under Ambedkar Hast Shilp Vikas Scheme. As far as the defacto complainant is concern, it is admitted fact he is one of the NGO selected for the scheme. He had already received Rs.75,000/- and he is entitled to receive the balance Rs.75,000/- provided he submits report of utilisation. The primordial condition to avail the benefit of the scheme is that M/s. Eco Green Unit which has been selected for the scheme should have members only within the given cluster of villages. The cluster are pre-determined by the department. The prospective Artisans list should contain name of the Artisans who live within the cluster. The next condition for grant-in-aid is that from among the proposed Artisans list, atleast 80% of them ought to have been involved in this scheme.

25. PW.7 (Ramamoorthy), Regional Director of Handicrafts Development, Chennai had spoken about the above the said conditions which has also been corroborated by PW.8 (K. Dhanarajan), Additional Director, Handicrafts Marketing and Services. Ex.P.17 is the grant-in-aid order issued to M/s. Eco Green Unit. It speaks about the above mandatory requirements in para 1 and 21.

> "Para 1: ......1st Instalment out of total sanctioned Grant-in-aid of Rs.1,50,000/- [Rupees one lakh fifty thousand only] to M/s. ECO GREEN UNIT, No.44, "DIVINE", Sri Lakshmi Nagar, Ganapathy Post, Coimbatore-641 106, Coimbatore District, Tamil Nadu for incurring of non-recurring expenditure towards Base Line Survey & Mobilization of Artisans for formation of 25 SHGs (approx) for 500 Artisans (Aprox) in Banana & Sisal Fibre Crafts at Ganapathy, Coimbatore District, Tamil Nadu (Emphasis added)
>
> "Para 21: The activity may be completed as per guidelines of the AHVY Scheme. The Artisans covered in the final report should consist minimum 80% from the prospective list already provided failing which no reimbursement will be made."

26. K.Dhanarajan [PW.8] had deposed that during the last week of December 2011, S.K.Babu [PW.3] met him and showed the documents found in Ex.P.7. On perusing the documents, he opined that the documents are in order and shall be submitted for reimbursement. However, the Additional Director who was in-charge of processing the file was on leave. Therefore, S.K.Babu [PW.3] took back the file from him. Further, PW.8 [K.Dhanarajan] had deposed that on 01.01.2011, S.K.Babu [PW.3] came to him again and informed him that the Assistant Director [Handicrafts] Gurumoorthy (accused) perused the file and found certain defects. He told him to resubmit it after rectifying the defects. In the cross examination, PW.8 admits that if there is any violation regarding the inclusion of artisans beyond the cluster limit or non-utilisation of less than 80 % of the proposed Artisans reimbursement will not be given.

27. Referring Ex.P.17, the grant-in-aid order in favour of M/s. Eco Green Unit, K.Dhanarajan [PW.8] had reiterated that paragraph 1 of the order speaks about the condition that the proposed Artisans must be within the cluster of (Ganapathy area) and para 21 of the order says atleast 80% of

the proposed Artisans should have been engaged in the scheme. When this witness has been confronted with his sample cheque/verification report dated 11.01.2011, he admits that, in Ex.D.7 and Ex.D.9 it is recorded that PW.3 has engaged Artisans from other cluster like Ondipudur, Irugur, Pallipalayam and Sollur. This witness admits in the cross examination that the information furnished by PW.3 under Ex.P.6 to Ex.P.11 and the information found in Ex.D.8 and Ex.D.9 are contradictory.

28. It is also admitted that after the trap proceedings, PW.3 has been reimbursed the balance sum of Rs.75,000/-. The comparison of the documents furnished by S.K.Babu [PW.3] before the trap and the documents furnished after trap differs on material particulars. S.K.Babu [PW.3] was able to get the reimbursement only after rectifying, modifying its earlier report which he has submitted to the accused and marked as Ex.P.8 and Ex.P.9.

29. One could arrive at two different inference from the evidence placed by the prosecution. The 1st inference, the accused would have refused to clear the reimbursement proposal with improper and defective report, disgruntled by that PW.3 would have lodged a false complaint. The second inference, the accused might have demanded bribe to process the report. This would have led to lodging complaint Ex.P.4. The correction and alteration in the report submitted by PW.3 and presented to PW.8 subsequent to trap would arise only if the first inference is right. Or else there is no need for PW.3 to correct his report and resubmit it on the advise of PW.8 to get reimbursement.

30. From the defence document, it is clear that the report submitted by PW.3 to the accused person before the trap would not have been cleared, if strictly scrutinize. Therefore, the explanation given by the accused that disgruntled by refusal to clear the proposal which has violated the conditions of grant is more probable and possible.

31. The trial Court had not given due consideration for the explanation given by the accused and documents relied by him. The trial Court has carried away by the evidence of the prosecution regarding demand, acceptance and recovery. Overlooking the lacuna in it and also miserably failed to give credence to the defence explanation which it deserves.

32. On re-appreciation of the evidence, this Court finds that, the prosecution has not proved the demand or acceptance beyond reasonable doubt. The explanation offered by the appellant appears to be more possible and probable. In the light of the above conclusion, this Court holds that the judgment of the trial Court ought to be set-aside.

33. In the result, the Criminal Appeal No.652 of 2014 is allowed. The judgment of conviction and sentence passed by the learned II Additional District Judge/Special Court (C.B.I Cases), Coimbatore in C.C.No.6 of 2011 dated 11.10.2014 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-VI)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The learned II Additional District Judge/Special Judge (C.B.I),
Coimbatore.

2. The Special Public Prosecutor [C.B.I]
High Court, Madras.

3. The Inspector of Police,
SPE:CBI:ACB:Chennai,

+1cc to Mr.K.SRINIVASAN, Advocate, S.R.No.52737
+3cc to Mr.K.SHANKAR, Advocate, S.R.No.52333

Judgment made in
Criminal Appeal No.652 of 2014

SVN(CO)
TR(13/08/2018)