BAIL SLIP

The Appellants/Petitioner/Accused No.1 Namely P.Sathish S/o Pattamuthu directed to be released on bail as per the order of t his court dated 5/10/12 in Crl.M.P.1/12 in Crl.Appeal NO.634/12 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018
CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.634 of 2012

P. Sathish ... Appellant

Vs

State represented by:
The Inspector of Police,
City II Detachment,
Vigilance and Anti Corruption,
Chennai - 600 020. ...Respondent

Prayer:

Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment in C.C.No.111 of 2011 [Old C.C.No.29 of 2007] passed by the learned Special Judge for the cases under Prevention of Corruption Act, Chennai, dated 30.08.2012.

For Petitioner : Mr.Thirumalai
For Mr.S.Nagarajan

For Respondent : Mr.K.Prabakar
Addl. Pubic Prosecutor

J U D G M E N T

The present appeal has been filed against the judgment of conviction and sentence in C.C.No.111 of 2011 [Old C.C.No.29 of 2007] passed by the learned Special Judge for the Cases under the Prevention of Corruption Act, Chennai, dated 30.08.2012, convicting the appellant/accused for the offence under Section 8 of Prevention of Corruption Act and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,500/- and in default, to undergo simple imprisonment for three months and also finding that the appellant guilty of offence under Section 420 IPC and convicting and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,500/- and in default, to undergo simple imprisonment for three months and both the sentences were ordered to run concurrently.

2. The case of the prosecution is that the appellant/accused is a private person and the acquitted accused (A2) was working as a Junior Assistant, Regional Transport Office (West), K.K.Nagar, from 30.04.2001 to 07.02.2005 and that A2 was a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988.

3. Tr.V.Kumar (PW2), son of Veluchamy is a resident of Virugambakkam and was working as a driver in a Maruti van bearing Registration No.TN-09-S-2743 owned by Tr.Janakiraman. Tr.V.Kumar (PW2) had approached the Lovata Company to fix a gas kit in the said Maruti van instead of petrol. The company authorities had demanded a total amount of Rs.11,000/- for the installation of gas kit and Rs.2,000/- for making an endorsement in R.C. Book regarding fuel conversion of the vehicle. Tr.V.Kumar (PW2) had refused to give Rs.2,000/- and told the company authorities that he would make the endorsement in the RTO office by himself.

4. On 04.02.2005 Tr.Kumar (PW2) had met the appellant at the RTO office (West) K.K.Nagar and the appellant/A1 had introduced himself as B1-Assistant in the RTO office and thereby PW2 had requested the appellant to make an endorsement in the R.C.Book. At that time, the appellant had demanded Rs.1,500/- from PW2 as illegal gratification for himself and for A2-Tr.John Bosco [acquitted accused] as a motive or reward for taking steps to get an endorsement in the R.C. Book and PW2 did not want to give illegal gratification, to the appellant and thereby PW2 had given a complaint to the respondent. Based on the complaint, the case was registered on 07.02.2005.

5. Pursuant to the demand on 07.02.2005 at 14.40 hrs, the appellant had reiterated his demand of Rs.1,500/- for himself and for A2-Tr.John Bosco [acquitted accused] at the RTO office (West) K.K. Nagar, Chennai and in the presence of A2 for getting an endorsement in the R.C.Book. While A2 was fully aware that the appellant/A1 had demanded and obtained money as illegal gratification, thus, the case was registered against A1 and A2 for having committed punishable under Section 420 IPC, and Section 8 r/w Section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act.

6. The prosecution, after investigation filed the final report on 06.02.2007 against the appellant/A1 and A2. The final report was filed against the appellant/A1 for the offences under Section 420 of IPC, u/s 8 of the Prevention of Corruption Act, 1988 r/w Section 7, 13(1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1982 and in respect of A2 charges were framed for the offences under Section 7 and 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988. Thereafter, the case was forwarded to the Special Court for the cases under the Prevention of Corruption Act, Chennai, for trial. The trial Court framed the charges against the appellant/A1 for the offences under Section 8 of the Prevention of Corruption Act r/w Sec. 7, 13(1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 and against the acquitted accused/A2 for offences under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act and u/s. 7 of Prevention of Corruption Act and Section 420 of IPC.

7. The prosecution had examined 10 witnesses viz., PW1 to PW10 and marked 13 exhibits Ex.P1 to Ex.P13 and 5 material objects were also marked as M.O.1 to M.O.5.

8. PW1 is the sanctioning authority, who has granted sanction for prosecuting A2, who was a public servant. The de-facto complainant was examined as PW2. He is an auto driver by profession. At the time of occurrence of offence, he was working as a driver of an Omni Van which was owned by Mr.Janakiraman, a resident of Nandanam and that he had approached the Lovata Company for conversion of gas kit. They had demanded Rs.11,000/- and PW2 had questioned that the cost of the gas kit is Rs.8,000/- and why the company is demanding Rs.11,000/-. The company authorities had informed him that for conversion of the gas kit and for an endorsement, they have to spend Rs.3000/- in the RTO office. PW2 had informed the company to fit the gas kit for Rs.8,000/- and he has stated that he would get the endorsement at the RTO office by himself, thereby, on 04.02.2005, PW2 had gone to the RTO office in the van to K.K.Nagar (West) and had given the application for conversion of gas kit and he was asked to meet B-Clerk in his room. When PW2 entered the office, the appellant/A1 was sitting there and had introduced himself as B1-Clerk. PW2 exhibited the Omni Van and the appellant/A1 had told him that he could have paid Rs.2,000/- in the Lovata Company and that they would have done the work smoothly and the appellant/A1 had also shouted and questioned him as to what he thought of RTO office. The appellant had further submitted that he would give a slip and after arranging the papers as per the slip, PW2 should bring it along with Rs.1,500/- as bribe amount. PW2 was not willing to pay the bribe. On 07.02.2005, PW2 had gone to the office of the respondent, Adyar and met the DSP-Mohan and had given a written complaint to the

DSP. The DSP had forwarded the complaint to the Inspector-Mr.Vedaratinam to accompany him. Thereafter, the Inspector read the complaint which is marked as Ex.P2. Along with P2, PW2 had enclosed the slip given to him by the appellant. Based on that, a case was registered and the FIR was prepared. Copy of the same was handed over to PW2 and his signature was obtained.

9. Subsequently, the Inspector summoned two official witnesses viz. Mr. Gunasekaran and Mr.Sekar and they were introduced to PW2 and he had explained the contents of the complaint to the above two witnesses, thereafter the Inspector Mr.Vedaratinam had questioned PW2 as to whether he had brought the bribe money demanded by A1 and PW2 answered in the affirmative and produced Five Hundred Rupee Notes, and Two, Rs.500 notes and the notes were given to the witnesses and they were asked to count and note down the numbers mentioned in them. Thereafter, two glass tumblers were brought and clean water was poured into them. Sodium carbonate powder was mixed in the water and a solution was prepared. Thereafter, the official witness Mr.Gunasekaran was asked to immerse his fingers in both hands separately in the solution. There was no change in the solution. Subsequently, Inspector Mr.Vedaratinam smeared phenolphthalein powder in the Rupee Notes and once again asked the witness Mr.Gunasekaran to count the notes. The witness Mr.Gunasekaran counted the Notes and immersed the fingers in both hands in the sodium carbonate solution. On immersion, the solution turned into light red in colour. The concept of the phenolphthalein test was demonstrated and explained. The Inspector handed over the notes to the amount of Rs.1,500/- to PW2 and instructed him to give the same to A1 only on his demand and that PW2 should not give the money voluntarily and that he should not thrust the money in the pocket of the accused. The Inspector asked PW2 to keep the money in his shirt pocket.

10. The Inspector further advised PW2 that on payment of bribe money to the accused, he should come out and give signal by rubbing his head. PW3 [Mr.Sekar] was asked to accompany PW2 and keenly observe the conversation and transaction between the accused and PW2. The sample solution was destroyed and all of them washed their hands with soap. The above event was recorded by way of a magazar, signed by PW2, Mr.Gunasekaran, Mr.Sekar and the same is marked as Ex.P4.

11. At about 12.00 noon, PW2 and PW3 the shadow witnesses left to the RTO office, Anna Nagar (West) and reached the office at 1.15 p.m. PW2 and witness Mr.Sekar were dropped at the RTO office others had hidden and the other hided themselves beyond 200 feet from the RTO office. PW2 and PW3 entered into the RTO office and PW2 met the the appellant who had asked him whether he has brought the bribe amount and PW2 answered in the affirmative.

A1 asked PW2 to hand over the money to a boy, named Ramesh, and PW2 doubted him and thereby PW2 asked A1 to receive the money himself. Initially, the appellant/accused refused to receive the money, but subsequently he received the money and the application from PW2 and kept the money in his shirt pocket and kept the application in the table. Thereafter, PW2 came out immediately and signalled to the Trap Laying Officer by rubbing his head. On seeing this, the Inspector, the other witness and the Police came to the RTO office and PW2 identified him to the Inspector. The Inspector asked PW2 to go out. The accompanying official witness was examined as PW3 and he has supported the evidence of PW2, and had stated that when they went inside the office, A1 asked PW2 as to whether he had brought the bribe amount.

12. PW3 had supported the evidence of PW2. As per his evidence, he had seen the appellant/accused inside the office and appellant/accused had asked PW2 as to whether he has brought the bribe amount. PW2 had answered in the affirmative and appellant/A1 had asked PW2 to give the money to one Ramesh who was standing outside. When PW2 had tendered the money to Ramesh he had blinked and hence PW2 did not give the money to the boy. Thereafter, he had come back and told the appellant/accused that Ramesh did not receive the money and immediately the appellant/accused had asked PW2 to give the money to him and the appellant/accused had received the same. At that time, the A2, the acquitted accused was sitting by the side of the appellant. The appellant had counted the money and kept the same in his shirt pocket. PW2 came out and signalled the police authorities. PW2 identified the appellant to the Inspector and apprised him that bribe money was paid to the appellant/A1. The Inspector introduced himself and the other witness and the police party to the appellant.

13. When the Inspector had questioned the appellant regarding the receipt of bribe money, the appellant/accused had admitted the same. Thereafter, the two glass tumblers were brought and sodium carbonate powder was mixed with water and solution was prepared in the tumbler. The appellant/accused was asked to immerse his fingers in two hands into the solution. On immersion by the appellant/accused the solution turned into pink in colour. The coloured solution was poured into two glass bottles and labelled. They were marked as MO2 and MO3. When the Inspector enquired the appellant/accused about his designation in the office, he had replied that he did not work in that office and was working as a broker and he was in the habit of doing the work for the staff of RTO office and for that work, he received money from the applicant. Thereafter, the Inspector took the money from the shirt pocket of the appellant and produced the same. The pocket of the shirt was immersed in sodium carbonate solution. The solution turned pink in colour. The solution was

transferred into a clean bottle sealed, labelled and signed by PW3.

14. Thereafter, the Inspector had enquired the B1-Clerk viz., A2, the acquitted accused who was working as a Junior Assistant in the RTO office and he had told him that his nature of work was to receive the tapal, register it and to verify the conversion files. He had stated that he did not know anything about the appellant. Then, the Inspector asked A2 to remove his shirt and immersed the same in the solution contained in the glass tumbler and the colour of the solution did not change. When the Inspector attempted to inspect the body and pant of A2, the acquitted accused he had taken a kerchief from his pant pocket, crushed it and threw it away. When the inspector took the kerchief and opened it, there were two 500 Rupee Notes and Thirty Hundred Rupee Notes and when questioned about the money, A2 had replied that it was his salary amount and he had stated the amount as Rs.5,000/-. The amount in the kerchief was seized and a file containing the application of PW2 was seized from the acquitted accused. Further, during enquiry, the amount in the hands of Tr.Xavier Jeyavel Raju, another staff working in RTO office, was verified and the excess amount of Rs.2,680/- was seized under a magazar marked as Ex.P5. Thereafter, the accused A1 and A2 were arrested by the Inspector. The Magistrate had initially framed the charges against the appellant under Section 420 IPC and Section 7, 13(1) (d) r/w 13(2) of Prevention of Corruption Act. Thereafter, charges were altered against the appellant/accused under Section 216 of Cr.P.C. for the offence under Section 8 of Prevention of Corruption Act and under Section 420 IPC. Thereafter, based on the findings and altered charge, appellant/A1 was found guilty for the offence under Section 8 of the PC Act and convicted to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,500/-, in default, to undergo simple imprisonment for three months and the appellant was also found guilty of the offence under Section 420 of IPC and convicted and sentenced to undergo rigorous imprisonment for one year and to pay a find of Rs.1500/- in default to undergo simple imprisonment for three months and both the sentences shall run concurrently. However, the trial court had acquitted A2 of all the charges stating that there was no evidence against him.

15. Assailing the judgment of the trial Court the learned counsel for the appellant/accused would submit that though the appellant/accused was trial along with A2 who is employed in the R.T.O office, the trial Court had acquitted accused for lack of material against him. Having acquitted the public servant the 2nd accused, the trial Court ought to have acquitted the appellant/accused also. He would submit that there are glaring contradictions in the evidence of PW2 [the complainant] with regard to the amounts alleged to be demanded by the

appellant/accused. He would submit that as per Ex.P2 complaint, an amount of Rs.13,000/- was claimed by Lovota gas company for fixing the gas tank and Rs.2000/- was demanded by the company for getting an endorsement in the R.C book. PW2 had further stated that the appellant/A1 had demanded an amount of Rs.1500/- along with the fees of Rs.100/- paid. Whereas, in his deposition before the trial Court PW2 had stated that the Lovota company had demanded an amount of Rs.11,000/- out of which Rs.8000/- was for the conversion of gas kit and Rs.3000/- was towards the R.T.O expenses for endorsement in the R.C book. He would also submit that the trial Court having acquitted A2 for lack of evidence ought to have also acquitted the appellant herein. He would submit that the trial Judge while acquitting A2 had held that there is no iota of evidence that A2 was contacted either by the de-facto complainant or by the appellant/accused and that there is no nexus between the appellant/accused and A2 in this case and further, the trial Court had also given a finding that PW2 or any other person did not give any complaint to the vigilance authority that A2 demanded bribe and that no trap was fixed for A2 in the bribe case.

16. The learned counsel for the appellant/accused would submit that having held that there is no evidence against A2, the trial Court erred in convicting the appellant for the offence under Section 8 of Prevention of Corruption Act. He would submit that admittedly the appellant/accused is stated to have received the amount only as service charges and that there is no evidence that the appellant/accused cheated PW2 and would further submit that the entire reading of the evidence, there is absolutely no material for the appellant/accused no.2 for having committed offences under Section 8 of the Prevention of Corruption Act.

17. He would further submit that none of the witnesses have spoken as if, the appellant had accepted or obtained or agreed to accept or obtain from any person for himself or for any person or any gratification by illegal means for doing any official act.

18. Per contra, the learned Additional Public Prosecutor for the respondent would fairly concede that though there may not be evidence against the accused for having committed offence under Section 8 of the PC Act, there are ample materials to show that the appellant had impersonated and accepted the money as a person working in the RTO office and thereby cheated the defacto complainant and received the amount. He would submit that the actual amount for conversion from petrol to gas kit was only Rs.100/- only, whereas he had demanded Rs.1500/- and further the receipt of the excess amount has been confirmed by the trap proceedings and the other trap witnesses have spoken about the appellant receiving the amount from PW2 which the appellant/accused is not entitled to receive and thereby the

trial court had rightly convicted the appellant/accused for offence under Section 420 IPC.

19. At this juncture, the learned counsel for the appellant/accused would make an alternate plea and would submit that in such circumstances, the appellant/accused ought not to have been convicted for the offence under Section 8 of the Prevention of Corruption Act and would submit that if this Court finds the guilt of the appellant/accused for offence under Section 420 IPC the Court may impose a lesser sentence.

20. I have gone through the evidence of PW2. As per the evidence of PW2, he had gone to the RTO office on 04.02.2005 and he was asked to meet the B1 clerk in the computer room and he had seen the appellant there. The appellant had introduced himself as B-1 clerk and had demanded the money for getting the endorsement in the R.C.book. On going through the evidence of PW2 nothing had been stated as if he had demanded the amount to induce a public servant. Further, PW3 who had gone along with PW2 as a witness for the trap had also not stated anything as if the amount was demanded to influence or induce a public servant. No other evidence has been let in by the prosecution to suggest that the appellant had received the money to induce the public servant and there is n o material against the appellant for having committed the offence under Section 8 of Prevention of Corruption Act. In the opinion of this Court, the conviction of the appellant/accused for Section 8 of the P.C. Act is not sustainable. However, on perusal of the evidence there is material to show that the appellant who is a broker has projected himself to be a clerk working in the RTO office and received the amount posing himself to be the government servant and that he had cheated the complainant by receiving Rs.1500/- illegally for processing the application.

21. In view of the above, since there is no evidence that the appellant/accused induced the public servant the conviction and sentence for offence under Section 8 of the Prevention of Corruption Act is set aside.

22. In the result, in view of the above observations, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant/accused for offence under Section 8 of the Prevention of Corruption Act is set aside. In respect of the conviction of the appellant under Section 420 IPC, the same is confirmed, however, the sentence of imprisonment imposed on the appellant/accused is reduced to four months instead of the sentence of one year. The appellant is directed to surrender before the trial Court forthwith to undergo the remaining period of sentence. If not, the trial Court shall take steps to secure the appellant/accused to undergo the remaining period of

sentence. The fine amount imposed to the tune of Rs.1,500/- for the offence under Section 420 IPC imposed by the trial Court, is enhanced to Rs.5,000/-. The appellant/accused is directed to pay the said enhanced fine amount less the fine amount already paid and in default to undergo a further period of two months simple imprisonment.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

msm

To

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

2. The Public Prosecutor,
High Court, Chennai.

3. The Inspector of Police,
City II Detachment,
Vigilance and Anti Corruption,
Chennai - 600 020.

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

+1cc to Mr.S.Nagarajan, Advocate SR.No.67175

Crl.A.No.634 of 2012

PP(CO)

GMY(02/11/2018)