BAIL SLIP

S.Ragavendran Appellant herein/Accused in C.C.No.36/04 (On the file of the Chief Judicial Magistrate Krishnagiri) was released on bail by the Ordr of this Court dated 01/06/2011 and made in Crl.MP.No.1/2011 in Crl.A.360/11 pending on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.360 of 2011

S.Ragavendran,
S/o. T.S. Srinivasa Rao,
Revenue Assistant / Bill Collector,
Hosur Municipality,
TD 57, TNHB Quarters,
Badalur Road, Hudco, Hosur. ... Appellant

Vs.

State Represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri. ... Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to appreciate and weigh the entire evidence in broad perspective and set aside the conviction and sentence imposed on him by the Learned Chief Judicial Magistrate at Krishnagiri, Judgment dated 31-05-2011 made in Special CC.No.36/2004.

For Petitioner : Mr.S.Ashok Kumar
Senior Counsel
for Mr.B.Jayaraman
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The appellant herein is the accused who was tried for the offences under Section 7 and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and after trial, he was convicted for the offence under Section 7 of Prevention of

Corruption Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for three months; convicted for the offence under Section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for six months. However both the sentences were ordered to run concurrently.

2. The case of the prosecution is that one Mr.Sugumaran, the defacto complainant, had constructed a shopping complex in Dhobi (Vannar) Street, Hosur Municipality after obtaining due planning permission. To assess the property tax for the said shopping complex, which consists of 9 shops, the accused S. Ragavendran, who was in charge of the area as Revenue Assistant / Bill Collector, Hosur Municipality, had initially demanded Rs.1,500/- per shop and later reduced it to Rs.1000/- per shop and subsequently reduced it to Rs.3,000/- as a consolidated payment to assess tax.

3. With this allegation the complainant Ex.P.1 dated 30.10.2003 had been lodged before the Deputy Superintendent of Police, Dharmapuri. Based on the complaint, after registering the First Information Report Mr.Muthusamy, Deputy Superintendent of Police-PW14 had taken up the investigation. After calling independent witnesses to be a witnesses for the trap proceedings he has prepared the pre-trap Mahazer and the trap money was entrusted to the defacto complainant Sukumaran. PW14 asked Sukumaran to proceed to the shop of PW1 along with PW3 and PW2-Prabhakaran and accordingly they accompanied him. The case of the prosecution is that at about 7.00 p.m on 30.10.2003, the accused came to the shop of PW1-Sukumaran and demanded the bribe money. When PW1 offered Rs.3,000/-, the accused received it and kept it in his shirt pocket. When PW1-Sukumaran offered Rs.7,000/- towards the tax, he returned it back saying that he would issue the assessment notice and thereafter collect it. After receipt of pre-arranged signal from PW1, the trap team surrounded the accused, recovered the tainted money from the shirt pocket of the accused person and had prepared Seizure Mahazer Ex.P.8. Immediately thereafter from the scene of trap they have gone to the office of the accused and from the table of the accused, the assessment order regarding the shopping complex owned by the defacto-complaint had been recovered under Mahazer Ex.P12.

4. Before the trial Court the prosecution examined 15 witnesses, exhibited 24 documents and 7 material objects to prove the charges. The trial Court after considering the evidence held that the demand and acceptance of illegal gratification by the appellant is proved by the prosecution. The evidence of PW1 regarding the receipt of illegal

gratification by the accused is corroborated by the evidence of accompanying official witness PW2. The recovery of the tainted money is spoken to by PW3 and PW14 cogently to the satisfaction of the Court. Hence the trial Court found the accused guilty and sentenced him to undergo imprisonment as stated above.

5. The learned Senior counsel for the appellant would submit that the self contradiction in the complaint marked as Ex.P.1 and the deposition of the defacto-complainant PW1 is suffice to infer that the complaint is false and not bonafide. The inconsistency in the case of the prosecution regarding the demand of bribe for assessment and the alleged acceptance of bribe, the date of visit to the subject premises for assessment of tax and the tax assessed by the authorities even before the trap were not given due consideration by the trial Court. The trial Court had not taken note of the contradiction in the written complaint regarding demand and the improvised deposition of PW1 before the Court. The contents found in P.10 assessment order signed by the Commissioner on 30.10.2003 much before the trap would falsify the prosecution case. The assessment order, Ex.P.10 recovered from the office premises of the accused and the explanation given by the accused immediately after the trap proceedings cumulatively vitiates the prosecution case.

6. Per contra, the learned Additional Public Prosecutor would submit that there is no much inconsistency in the evidence of the prosecution witnesses, to vitiate the trap proceeding, as alleged by the learned senior counsel appearing for the appellant. The complaint marked as PW.1, visa-vis the deposition of the defacto-complainant who was examined PW.1. there is no serious inconsistently. The appellant demanded Rs.1500/- as illegal gratification for assessing the 7 shops at the rate of Rs.1,000/- per shop. Later it was reduced to Rs.1,000/- per shop. On 27.10.2003 he reiterated the demand and told the defacto-complainant that he will collect the bribe money as well as the tax on 30.10.2003. Accordingly when he came on 30.10.2003 to the shop of the defacto-complaint he got caught in the trap laid by the vigilance department. The complaint itself reflects that the accused demanded illegal gratification and told that he will come and collect the amount along with the tax money on 30th. In his deposition PW1 has spoken about the payment of Rs.3,000/- as illegal gratification to the accused and that he offered Rs.7,000/- towards tax but it was refused by the accused stating that the assessment order had already been feeded in the computer and kept for commissioner's signature and he will serve the assessment order and then collect the tax. So there is no inconsistency in the deposition of PW1 regarding the offer of Rs.7,000/- towards tax to the defacto-complainant. Further the learned Additional Public Prosecutor would also take this Court to the deposition

of PW2-Prabhakaran who was the accompanying witnesses who corroborated the evidence of PW1 regarding the demand and acceptance of illegal gratification.

7. The point for consideration is whether Rs.3,000/- recovered from the accused person is illegal gratification or the money offered towards tax as contended by the accused / appellant. This Court on close scrutiny of the complaint Ex.P.1 finds that there is a specific averment in the complaint that the defacto-compliant has put up a shopping complex after getting planning permit from the competent authority but the building was not subjected to assessment for municipal tax. When he had a prospective tenant from a Co-operative Society, he was requested to give the tax receipt for entering into the rental agreement. Only then he has thought it fit to apply for tax assessment. In the complaint he say that on 27.10.2003 the accused met him and demanded bribe to undervalue the property and assess less tax for the building stating that he has already completed the measurement of the shop and he has assessed each shop at the rate of Rs.3,000/- and for 7 shops it will be around to Rs.21,000/-, so to reduce the tax burden he should pay bribe. After negotiations the bribe amount was fixed at Rs.3,000/-. Whereas in the deposition, contrary to the content of the complaint he says even at the time of demand the measurement was completed. PW.1 has deposed that he met the accused person on 27.10.2003 and he told that he has to inspect the premises for assessment so he took the accused in his two wheeler to the premises and after inspecting the premises the accused informed him about the possible quantum of tax to be fixed and for reducing the tax, bribe should to be given. In cross examination, PW1 has specifically denied that no one was with the accused person when he came to the premises and measured the building for assessment.

8. This above portion of the deposition is contradictory to the evidence of PW.6-Mr.Raman who is the Revenue Inspector. According to his evidence on 27.10.2003, he inspected the premises for assessment along with accused person and assessment number was assigning to all the 9 shops, the necessary particulars were fed in the computer, after that tax was assessed at the rate of Rs.1734/- per shop and the assessment order was signed by concerned officer including the commissioner as early as 30.10.2003. The said assessment order is also identified by the witness and marked as EX.P.10. This Court on perusing Ex.P.10 finds that the inspection of the premises was not done solely by the accused person. He had inspected the premises along with PW.6, and after inspection the assessment has been done and order had been issued by the competent authority.

9. The accused person had gone to the shop of the defacto-complainant on 30.10.2003 at around 7.00 p.m. The Seizure Mahazer indicates that along with the tainted money tax receipt bill book and a sum of Rs.2,820 was also seized from the accused. The explanation given by the accused for possessing Rs.2,820/- has been accepted by the trap laying officer and the same has been returned. This amount, according to the prosecution, is the tax money collected by the accused person. One glaring defect in the prosecution, which this Court would see, is that in the seizure mahazer marked as Ex.P.8, it is recorded by the trap laying officer that an opportunity was given to the accused person to offer his explanation about the possession of the tainted money and also he enquired about the assessment order from the Mahazer. It appears that the accused has informed the trap laying officer that the assessment order kept for signature of the Commissioner. So also PW.1 in his deposition has said that when he offered Rs.7,000/- towards the tax, the accused returned it saying that the assessment order is to be signed by the commissioner and he will get it signed by the Commissioner and serve him on Monday. Whereas Ex.P.12 Mahazer which is contemporariness document prepared for the search of the office premises and it indicate that the assessment order pertaining to the shopping complex of the defacto-complainant was recovered from the seat of the accused person. The theory of the defence that based on the inspection conducted by PW.6 and the accused person on 27.10.2003, assessment was made by the Hosur Municipality and orders was issued on 30.10.2003. The said order which is generated from the computer printout and marked as Ex.P.10 proves that the property was assessed at the rate of Rs.1734/- per shop and no concession or violation in the said assessment is found. While the tax has been assessed at the rate of Rs.1734/- the theory of the prosecution that sum of Rs.3,000/- was demanded and accepted by the accused person to assess at the rate of Rs.1,000/- per shop falls to ground.

10. Furthermore, after assessment, the accused person went to the shop of the defacto complainant to collect the tax and issued receipt for the same. Since the defacto complainant offered only Rs.3,000/- instead of Rs.3448, the accused returned the money back. Taking advantage of handling the tainted money the defacto-complainant signalled to the trap laying officer and falsely fixed the accused. The motive for such a false acquisition is that few months back, the municipal authorities initiated prosecution against the defacto-complainant for illegally demolishing building of the municipality. To substantiate the defence the learned senior counsel invited the attention of this Court, to the suggestion in the cross examination of PW.1, wherein he has stated that two years ago he demolished shops of the municipality since it was causing

hindrance. But, he admits that a complaint was lodged by the sanitary supervisor Narayanan Samy, Revenue Inspector Mr.Raman and the same was investigated by the police.

11. On a cumulative assessment of the evidence of the prosecution and the explanation given by the accused person, there is reasonable doubt in the genuineness and veracity of the complaint. When there is a possible explanation for handling the tainted money, more particularly the assessment for the defacto-complainant shops was completed and tax was due for payment, the possession of the amount by the accused on the premises of the defacto-complainant along with bill book gives a reasonable impression that he had gone to collect the tax and he has handled the tainted money believing it as money offered towards the tax. In the said circumstances this Court is of the view that the judgment of the trial Court requires interference, since the conviction is based on uncorroborated evidence.

12. In view of the possible explanation given by the accused person, he is entitled for extending the benefits of doubt. Accordingly, this appeal is allowed. Conviction sentence is set aside.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1.Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri.

2.The Learned Chief Judicial Magistrate,
Krishnagiri.

3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.B.Jayaraman, Advocate SR.No.9806

Crl.A.No.360 of 2011

NM(CO)
GN(20/02/2018)