BAIL SLIP

Mr.Muniappan, Aged 45, Son of Periyasamy, accused in Spl.C.C.2 of 2005 on the file of Special Judge cum chief Judicial Magistrate, Coimbatore was enlarged on bail by the Hon'ble High Court, Madras vide order dated 08.07.2011 in M.P.No.1 of 2011 in Crl.A.No.412 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.02.2018	Pronounced on: 27.02.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.412 of 2011

Muniappan ...Appellant/Sole Accused

/versus/

The State by
The Inspector of Police,
Vigilance & Anti-Corruption Section,
Coimbatore,
Crime No.3/2004/AC/CB ... Respondent/Complainant

PRAYER:

Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction imposed on the Appellant herein by the Judgment dated 13.06.2011 passed by the Learned Special Judge cum Chief Judicial Magistrate Court, Coimbatore in Special C.C.No.2 of 2005 in Crime No.3/2004/AC/CB on the file of the respondent police.

For Appellant : Mr.R.Kathikeyan
Mr.P.Srinivas
For Respondent : Mr.P.Govindaraj,
Additional Public Prosecutor

J U D G M E N T

This appeal is directed against the judgment dated 13.06.2011, passed in Special C.C.No.2 of 2005 on the file of the learned Special Judge cum Chief Judicial Magistrate Coimbatore,

2. Thiru. P.Muniappan, the appellant herein, while serving as Revenue Inspector, Tiruppur Municipality, Tiruppur, on 23.01.2004 alleged to have accepted Rs.8,000/- as illegal gratification from one Viswanathan to assess lesser tax than the actual, to the property of his mother Tmt.Samiathal. The trial court held him guilty for offences under section 7 and 13(2) r/w 1391)(d) of Prevention of Corruption Act,1988. Sentenced him to undergo two years Rigorous Imprisonment and pay fine of Rs.5,000/- for each of the offences. In default in payment one year Simple imprisonment each. The substantive sentence to concurrently.

The gist of the prosecution case:

3. On 12.12.2003, Tmt.Samiathal through her son Thiru.Viswanthan (PW-2), submitted an application (Ex.P-2) to assess tax to her property at R.S.Puram, First Street, Mannarai Village, Tiruppur. Acknowledgment Receipt (Ex P-3) was issued to Viswanathan, in which he was informed that he can collect the order on 29.12.2003. On 29.12.2003 he met PW-6 Thiru. Sivaraj, the Bill Collector. PW.6 told Viswanathan to meet Muniappan, the Revenue Inspector (accused/appellant) after Pongal Holidays, since Muniappan has gone to Sabarimala. Accordingly, on 19.01.2004 morning PW-2 met Sivaraj, who told him to come in the evening along with the title deed copy. On that evening at 5.00 pm again he met Sivaraj. Sivaraj called his help hand Satish (PW-7) and asked him to take PW-2 to Revenue Inspector Muniappan.

4. PW-2 met Muniappan and requested him to assess tax to his house. On perusing the documents Muniappan told that tax has to be levied for 12 years, if it has to be reduced he should pay Rs.10,000/- as illegal gratification. Viswanathan requested Muniappan to reduce the demand so, it was reduced to Rs.8,000/-. Satish, a private person who was a help hand of Sivaraj was asked to visit the property and check the measurements. Thereafter, on 22.1.2004, when PW-2 met the accused the demand of illegal gratification was reiterated.

5. PW-2 Viswanthan who was not inclined to give bribe, went to the Vigilance and Anti-Corruption detachment at Coimbatore on 22.01.2004 and reported about the demand of illegal gratification by Muniappan. A criminal case under section 7 of the Prevention of Corruption Act against Muniappan was registered and trap proceedings was initiated by PW.10 [Thiru.Ramachandran], Inspector of Police. Two official witnesses by name Ramajeyam [PW.3] and Sunder were called to the Vigilance office on 23.01.2004 to be witnesses to the trap

proceedings. The pre-trap proceedings were demonstrated to them. The significance of phenolphthalein was explained to them and the bribe money smeared with phenolphthalein was entrusted to Viswanathan. Same was recorded by way of entrustment mahazaar [Ex.P.6]. At about 11.05 am, the defacto complainant Viswanathan along with the Ramajeyam met Muniappan at his office. Muniappan demanded and received Rs.8,000/- from Viswanathan counted it and kept it inside the table drawer.

6. Viswanathan came out and combed his hair, the pre-agreed signal to inform the trap team waiting in disguise that Muniappan had received the money. On receipt of the signal, the trap team lead by Ramachandran, Inspector of police came to the seat of Muniappan, confirmed he has received money from Viswanathan. After conducting phenolphthalein test on both of his hands, the tainted money was recovered from his table drawer. Mahazaar [Ex.P.7] was drawn and investigation proceeded further. The accused being a public servant, sanction to prosecute him was obtained from the authority competent to remove him from service. On completion of investigation, final report was laid before the Special Court. Charges under section 7 and Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act was framed and tried. To prove the charges, the prosecution has examined 11 witnesses, marked 18 exhibits and 5 material objects. On the side of the defence, the accused examined as a defence witness and 18 exhibits were marked in his support as defence exhibits.

Case of the defence:

7. An application from Tmt.Samiathal w/o Karuppusamy to assess tax to her property was received by the Tiruppur Municipality on 17.12.2003. It was assigned Na.Ka.No.12099/D3/A3 and forwarded to Revenue Assistant Sivaraj [PW.6]. After verification he returned the file on 31.12.2003 with a note (Ex.P-15) on the reverse of the application (Ex.P-2) that the address given in the application is not correct, so the file may be closed. PW-2 the defacto complainant on 19.01.2004 came to the accused/appellant along with Satish. Gave a fresh application and property document and requested to assess the tax. The accused/appellant enquired with the defacto complainant Viswanathan about the location of the property and asked Satish to go and verify the property the next day. At that time, Viswanathan enquired about the quantum of tax likely to be levied. The accused/appellant informed him that, vacant land tax not paid for 12 years. For 6 years (12 half years) tax for

vacant land has to be paid besides tax for the building. Based on the value shown in the title deed and the extend of the building constructed, he informed it will be around Rs.8,000/-. The defacto complainant beg to levy tax only for the current year and not to assess tax for 12 half years. When that was refused by the accused/appellant, the defacto complainant went away. Again on 22.01.2004 at about 10.00 am, Viswanathan came to the accused and told him that he has come to pay the tax. When he told PW-2 that working sheet is not made ready. He has to get the signature of the higher official. The accused again requested to receive the current year tax alone and not to insist to pay the arrears. The accused refused to consider his request and shouted at him. So Viswanathan got infuriated and went out. He has given the false complainant, as if, the accused/appellant demanded Rs 8000/-as illegal gratification and received from him as gratification.

8. In fact, on 23.01.2004, PW-2 came at 11.00 am and told that he has brought Rs 8,000/- to pay the tax. So he instructed PW-2 to pay the vacant land tax to Bill collector and remit the building tax at computer counter. Meanwhile he will get the signature from the higher official in the working sheet. Viswanathan told him that the computer billing counter is crowded and the Bill collector Sivaraj is not in his seat, so requested to receive the money, pay it and give the receipts to Sivaraj, Bill collector from whom he will get the receipts later. Therefore, he received Rs.8,000/- from PW-2.

9. There was instruction by way of circular Ex.D-4 permitting Bill collectors and Revenue Inspectors to collect the tax directly from the tax payers instead of requesting them to pay at computer counters which many of them are not accustomed. The defence exhibits D-1 to D-3, the applications of Samiathal for assessment for tax will show that after the trap proceedings Samiathal has given fresh applications on 29.01.2004, and based on her applications tax has been assessed vide Ex.D-5 to Ex.D-7 . A total sum of Rs.8,024/- as tax was demanded through notices Ex.D-8 to Ex.D-14 on 30.01.2004.

The finding of the trial court:

10. The evidence of the prosecution regarding demand and acceptance is proved through PW-2. The acceptance and recovery of tainted money is proved through PW-3 and PW-10. The explanation given by the accused that he received the money towards tax is not believable because, on the date when the

money was received, the working sheet for assessment was not made ready. Without working sheet, tax cannot be collected. So what is received by the accused is not legal remuneration. While the demand and acceptance of illegal gratification is proved by the prosecution through its witnesses, the presumption that the money received as illegal gratification is not rebutted by the defence. Whereas, the receipt of tainted money is admitted by the accused, the explanation for receiving the money is not plausible as seen from Ex.D-1 to Ex.D-14.

Submission of the appellant/accused:

11. Aggrieved by the above finding the accused has preferred this appeal alleging that, the prosecution has failed to prove the case beyond reasonable doubt. The defence exhibits which palpably demonstrate and lucidly exhibits the innocence of the accused were not given due consideration by the trial court.

12. The learned counsel for the appellant would submit that the Trial Court ought to have considered the defence of the Appellant herein that he had kept the money only in the drawer of the table in the office, he had received it in the presence of all other colleagues and also in front of some public. A prudent man can easily find that a person will not accept the bribe in front of the public. This shows that the Trial Court had not applied its mind in to the issue and the Judgment rendered by the Court below suffers from serious infirmity and perversity.

13. The Trial Court failed to note that immediately after the date of occurrence PW.2 had been called upon to pay Rs.8,024/- as House Tax and vacant site Tax. This shows that the Appellant herein had not committed any offence at all. He had been penalized for discharging in his official duty.

14. The Trial Court below failed to note that the Appellant herein has no authority either to reduce or to increase the House Tax. He can only collect and pay it to the Government. Here is a case where the prosecution pleads that the appellant herein had asked for bribe for reducing the house tax payable by the PW.2 which is implausible and astonishing. The Court below grossly erred in believing the story that the appellant had demanded bribe to do an impossible act. The Trial Court ought to have acquitted the appellant herein on this sole ground alone.

15. The Court below failed to note that the appellant herein had successfully rebutted the presumption against him by a reasonable, plausible and by a true explanation. When the presumption is rebutted or dispelled no Court can convict a person. Inferring to the Contrary ended in grave in justice to the Appellant herein.

Submission of the respondent/State:

16. Per contra, the Learned Additional Public Prosecutor would state that, the trial court has not erred in appreciating the evidence placed before it. The deposition of PW-2 defacto complainant and PW-3 accompanying witness proves the demand and acceptance of tainted money. The evidence of PW-6, PW-7 and PW-8 who are the witnesses present when the defacto complainant met the accused on the earlier occasions proves the circumstances under which the accused demanded bribe. There evidence corroborates the case of the defacto complainant. Nothing elicited from these witnesses during cross examination that there was exchange of words between the accused and the defacto complainant on 19.01.2004 or 22.01.2004 regarding PW-2 request to show concession in assessing tax and the alleged refusal by the accused. If, really, the earlier application was closed without any assessment, then the explanation given by the accused that he received the money pending signature from his superior in the working sheet gets falsified. Therefore, the trial court has rightly disbelieved the explanation offered by the accused. Hence, there is no ground to interfere the judgement of the trial court.

Point for consideration:

> Whether the explanation offered by the accused for the receipt of the tainted money is plausible and fall within the ambit of preponderance of probability?

17. The case of the prosecution witness PW-2 is that he met Sivaraj, (PW-6) on 19.01.2004, who told him to meet the accused along with the copy of the title deed and send Satish along with him to meet the accused. This part of the PW-2 evidence is corroborated by PW-6 and PW-7 and the accused also in his evidence accepts that on 19.01.2004, Viswanathan (PW-2) came with Satish (PW-7) and asked to assess the property and levy tax. PW-7 was asked by the accused to visit the property, measure it and report. This is also an admitted fact.

18. According to the accused, on 22.01.2003 PW-2 came to him and requested not to assess the land for 6 years (12 half years), but to assess tax and receive for the current half year alone i.e. 2003-2004. The appellant refused to accept his request, shouted at him. It is also the case of the prosecution that he is not competent to reduce the tax or assess the tax for the current period alone.

19. In support of his submission, the appellant relies upon the documents marked on his behalf as Ex.D-1 to Ex.D-14 and also the endorsement made on the reverse of Ex.P-2 which is marked as Ex.P-15. Ex.P.2 is the application to assess Tax given in the name of Tmt.Samiathal. Ex.P.3 is the acknowledgement given by the Tiruppur Municipality for receiving the said application. On the reverse of Ex.P.2 action taken by Municipality and the notes submitted by the Officers are found. From these three Exhibits, we find that on 12.02.2013 the application to assess the property at R.S.Puram, 1st street Mannarai Village, Tiruppur has been sought by its owner Samiathal. The Tiruppur Municipality on receipt of the application has issued the acknowledgement marked as Ex.P.3 that the orders pursuant to the said application can be received from the Office of Tiruppur Municipality on 29.12.2003.

20. According to PW.6, Sivaraj, Revenue Assistant, this application was received by him on 29.12.2003. As per the instruction of the accused, on receipt of the application he went for inspection of the property on 02.01.2004 and found that there is no building in 3rd street as mentioned in the application. The house of Samiathal was located in the 1rd street. Therefore he returned the application stating that the address is not properly furnished and he has closed the application on 05.01.2004. After two days the defacto complainant Viswanathan met him and enquired about his application, he informed Viswanathan that due to improper address, his application was closed. After two days again Viswanathan came and enquired about the application. Since P.Muniappan was on leave, he requested Viswanathan to come after Pongal holidays. On 19.01.2004 at 3.00pm Viswanathan came and met him and showed the copy of the title deed, so he asked Assistant Satish to take Viswanathan and meet Revenue Inspector Muniappan.

21. The evidence of PW.6 does not corroborate the endorsement which is marked as Ex.P.15 on the reverse of Ex.P.2. The application of Samiathal which was received on 12.12.2003 had been forwarded to PW.6 on 17.12.2003 to inspect and submit

report. In turn PW.2 had returned the file stating that address is not furnished correctly therefore he recommend to close the file. To that effect endorsement is made on 31.01.2003. The proceedings has been issued on that day and file has been closed on 22.01.2004, the date on which PW.2 alleges Muniappan demanded a sum of Rs.8,000/- as bribe to fix lesser tax.

22.The accused who has mounted the witness box and examined as DW.1 had deposed that after closing of application of Samiathal on 31.12.2003, PW.2 came to his office on 19.04.2004 along with Satish [PW.7] who has help hand of PW.6 [Yuvaraj]. On perusing the documents he estimated tax of Rs.6,750/- for 12 half yearly tax for vacant site, and the tax for building of Rs.1,250.

23. When Viswanathan requested to assess tax for the current year alone, the accused has informed that he cannot relax the Rule so, PW.2 went out. On 22.01.2004, the defacto complainant came to his seat and again and told him that he want to pay tax. According to the accused, at that time, he informed the defacto complainant that he has not prepared the working sheet. After preparing the working sheet, the Senior Office has to sign it. Again the defacto complainant sought reduction in tax and to assess only for the current year.

24. It is the case of the accused that the defacto complainant was not satisfied with his reply and he had gone to Vigilance and Anti Corruption Wing and lodged a complainant. Based on the complaint, the trap team has come to the Office on the next day. The money received by them towards tax has been recovered from his Office table drawer as if he received it as illegal gratification.

25. It is also further case of the accused that he has given his explanatory statement to the Trap Laying Officer immediately after the trap proceedings and recovery of tainted money from his table drawer but the same was not taken note by the Trap Laying Officer and he has not placed the same before the Court.

26. This Court finds some force in the said submission, because the sanctioning authority PW.1 Mr.Hans Raj Varma, I.A.S both in his sanction for prosecution marked as Ex.P.1 and in the Chief Examination has referred about the Statement of the accused Officer Muniappan was perused by him before according sanction. Whereas the Trap Laying Officer denies the suggestion

he recoded statement of the accused. Either way, when the Vigilance Manual directs the Trap Laying Officer to record the statement of the accused persons, omission of the same though may not be fatal to the prosecution, when the officer who has accorded sanction mentions about such statement while applying his mind to accord sanction, non production of the said statement causes doubt in the case of the prosecution. If the statement of the sanctioning authority PW.1 is accepted as true then the deposition of Trap Laying Officer is false. As far as the omission in recording the statement of the accused, if he has not recorded the statement of Muniappan but PW.1 say he has perused the statement of the accused, then there is something wrong in his application of mind. Further the defence document though all subsequent to the Trap proceedings indicates the actual tax to be paid by the defacto complainant for the land and the building which stands in the name of his mother Samiathal was Rs.8,024/-

27. It is also further elicited through the evidence of PW.2 the defacto complainant that he has received the demand notice for the vacant site with objection and it is also elicited from the PW.11 Selvaraj who investigated and filed final report that defacto complainant had paid the tax of Rs.6,756/- for vacant site and Rs.1,250/- for the building in total Rs.8,024/- which was the money almost received by the accused when it was offered by the defacto complainant to be remitted.

28. The defence through the Ex.D.1 to Ex.D.14 had placed before this Court to substantiate his explanation for receipt of the money and there is contradictory evidence between PW.1 and PW.11 regarding the recording of the accused statement immediately after trap, which is not been placed before this Court. Whereas PW.1 sanctioning authority had deposed that he has perused the accused statement and also recorded in his sanctioning order Ex.P.1 mentioning that he perused the statement of Muniappan.

29. This Court is of the opinion that the explanation offered by the appellant is probable and possible. When he had been authorised to collect tax directly from the assesses and to remit in the computer counter. The conduct of the defacto complainant who was not inclined to pay vacant land Tax for the said 12 half yearly which he is liable to pay and had received the demand notice under protest indicates he was not inclined to pay the Tax arrears and tried to hobnob the revenue inspector who had refused to assessed his request. This had let to give complaint against the appellant. The prosecution has failed to record his explanation or omitted to place his explanation before the Court, either way it has made the prosecution case doubtful. Since the prosecution has failed to prove the guilt of

the accused beyond reasonable doubt, the finding of the Trial Court requires to be set aside.

30. In the result, the Criminal Appeal No:412 of 2011 is allowed. The judgment of conviction and sentence passed by Special Court cum Chief Judicial Magistrate Court, Coimbatore. in C.C.No.2 of 2005 dated 13.06.2011 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. The appellant is set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Learned Special Judge cum
   Chief Judicial Magistrate Court,
   Coimbatore.

2. The Inspector of Police,
   Vigilance and Anti Corruption Section,
   Coimbatore.

3. The Additional Public Prosecutor,
   High Court, Madras.

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

+1cc to Mr.R.Kathikeyan, Advocate, S.R.No.14970

Criminal Appeal No. 412 of 2011

SS(CO)
CS/20/03/18