

BAIL SLIP

The Appellant herein/accused Viz., S.Krishnasamy S/o.Subaiya Gounder was directed to be released on bail as per the order of this court dated 07.11.2007 made in MP 1/2007 in CrI.A.1002/2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.02.2017

Judgment Pronounced on : 25.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.1002 of 2007

S.Krishnasamy, ... Appellant/Accused

Vs.

Inspector of Police,
Vigilance and Anti-corruption,
Coimbatore - 600 037.
Respondent/Complainant

...

Prayer: Criminal Appeal preferred under Section 374(2) of Cr.P.C., against the Judgment dated 17.10.2007 passed by the learned Special Judge Cum Chief Judicial Magistrate, Coimbatore, in Spl.C.C.No.2 of 2003.

For Appellant : M/s. K.P. Gopalakrishnan

For Respondent : Mr.E. Raja,
Additional Public Prosecutor
(V&AC)

JUDGMENT

The Criminal Appeal has arisen out of the judgment of conviction and sentence, dated 17.10.2007 made in Spl.C.C.No.2 of 2003 on the file of the Special Judge cum Chief Judicial Magistrate, Coimbatore, whereby the accused was convicted for an offence U/s. 7 and 13(2) r/w Section 13 (1)(d) Prevention of Corruption Act, 1988 and sentenced to undergo one year Rigorous Imprisonment for each offence and to pay fine of Rs.1,000/- for each offence, in default to undergo 6 months simple imprisonment for each offence. The sentence imposed against him was ordered to run concurrently.

2.The case of the prosecution is as follows:-

The Appellant/Accused, while working as Village Administrative Officer (VAO), at Amandakadavu, Udumalpet Taluk, demanded illegal gratification of Rs.1,300/- from the PW2, defacto Complainant on 21.03.2002 for processing the application for issuing Patta in respect of the properties belonging to Tmt. Rajammal, who is the aunt of P.W.2. In continuation of the same, on 26.03.2002 when P.W.2 approached the Appellant/Accused to get Patta Passbook, the Appellant/Accused received the application form and again demanded bribe amount of Rs.1,300/- to process the Patta Passbook application. Since the said Rajammal and the defacto Complainant were not willing to give any bribe amount, the defacto Complainant/P.W.2 Dilipan lodged Ex.P2 complaint on 27.03.2002 with P.W.9, the Inspector of Police, Vigilance & Anti-corruption, Coimbatore, and on the basis of the same, a case was registered in Crime No.11/2002 u/s 7 of Prevention of Corruption Act, 1988. A trap was organized on 28.03.2002 at about 7.30 A.M. P.W.3 Selvaraj and one Devaraj, both of them are Government servants were directed to be present as trap witnesses. P.W.2 Dilipan produced a sum of Rs.1,300/- (i.e.) two currency notes of Rs.500/- denomination and three currency note of Rs.100/- to P.W.9, who was the Trap Laying Officer. The numbers of the said currency notes were recorded in the presence of witnesses and the currency notes got smeared with phenolphthalein powder. The Complainant/P.W.2 Dilipan took the smeared notes and went along with PW3 Selvaraj to the house of the Appellant/Accused at about 9.15pm. One Devaraj and P.W.9 Inspector of Police Navaneethakrishnan stood outside the said house. The Accused was sitting in a chair and on seeing them, he asked P.W.2 Dilipan as to whether he has brought the bribe amount and thereafter P.W.2 gave Rs.1,300/- to the accused who in turn assured that he will make arrangement for the issue of Patta Passbook sought for by P.W.2. Thereafter, the trap witness P.W.3 and complainant P.W.2 came out from the house of the accused and informed the P.W.9 Inspector of Police Navaneethakrishnan who was waiting nearby about the acceptance of bribe amount by the accused. Then they went inside the house and in the solution of clean water and sodium carbonate, the right hand fingers of the Accused was immersed upon which, it turned into light pink color and on verification, the numbers of the currency notes which were kept by the Accused were tallied with the numbers of the notes written in Ex.P4 Mahazar. All the formalities were completed, the accused was arrested and remanded into Judicial custody. Thereafter obtaining sanction, charge sheet was filed against the Accused.

3.The Trial Court framed charges u/s 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and as the Accused pleaded not guilty, the case was posted for trial. To prove the charge against the accused, Prosecution examined 11 witnesses and marked documents Ex.P1 to Ex.P18 apart from prosecution

M.Os.1 to 7. On the side of the respondent/accused neither oral nor documentary evidence was let in. Having considered the materials available on record, the trial Court concluded that the prosecution has proved the charges against the accused and convicted and sentenced the accused as stated above. Hence, this appeal is preferred by the accused seeking to set aside the same.

4.The learned counsel for the appellant submits that the lower court failed to take serious note of the allegation of the accused that P.W2 had motive to implicate the accused since he did not oblige him with the 40 cents of lands for which he is not entitled for as per the documents. Further it is argued that the Ex.P5 is the vital document on which the entire case of the prosecution rests. The same was handed over to P.W.2, which is revealed during cross-examination of P.W.2. However, as per the prosecution that document Ex.P5 was recovered from the office of the accused while he was in judicial custody and the same is unbelievable one, which proves that the prosecution mechanically recorded statement according to their whims and fancies.

5.It is further stated that the trap laying officer himself had admitted that he would not have registered a case and initiated proceedings if he had seen Ex.P5 before registering the case, since Ex.P5 was a completed form and there was nothing more to be done by the accused in that form and as such there was no necessity for any demand.

6.It is further contended that P.W.9 immediately after registering the case against the accused for an offence Under Section 7 of the Prevention of Corruption Act without even verifying the antecedents of the accused or the complainant and without perusing any records, fixed up the time for laying of the trap the very next day itself which will go to show that prosecuting acted in haste without any basis.

7.It is further argued that P.W.2 had the intention of paying the amount on the same day itself and to secure the accused during night at any cost. P.W.3 has also stated that P.W.2 and P.W.9 planned to take the accused in the night itself. It is evident that they wanted to secure the accused from his residence on 28.03.2002 itself. It is also pointed out that P.Ws 2 and 9 have admitted that the accused had not told PW-2 to come and meet him at particular date, place and time. Thus the appellant seeks to entertain the appeal.

8.On the other hand, opposing the appeal, the learned Additional Public Prosecutor who appear for the respondent submitted that the de-facto complainant/P.W.2 has categorically deposed in his evidence that the appellant/accused demanded

bribe amount of Rs.1,300/- from him to issue Patta Pass book in the name of his aunt Rajammal. During the trap proceedings also the appellant/accused demanded and accepted the bribe amount which is clearly established the evidence of P.W.2 and P.W.3. The other prosecution witnesses also corroborated the same. In the case of trap, the prosecution is bound to prove these aspects, namely the demand and acceptance of bribe and recovery of the same from the appellant/accused. In the present case, all the three importance fact is proved by the prosecution with cogent oral and documentary evidence. Hence, the prosecution pleaded to dismiss the appeal and confirm the trial court verdict.

9.I have heard the rival contentions and perused the materials available on record.

10.It is an admitted fact as per the sale deed in favour of Rajammal she is having land to an extent of 2.69 acres, but the actual land in her possession is less than 40 cents from 2.69 acres. It is contended that the de -facto complainant/P.W.2 insisted to give Chitta to an extent of 2.69 acres with the appellant/accused, but the appellant/accused refused to do the same. Due to which, the defacto complainant/P.W.2 developed enmity with the appellant/accused and lodged a false complaint against the appellant/accused. According to the defence counsel that the motive for the entire case and it is evident from the admission of P.W.2 during his cross examination.

11.As per the evidence of the de-facto complainant/P.W.2 it is admitted that at the first time of submitting application to the appellant/accused on 21.03.2002, he instructed to affix court fee stamp in the application form. Further it is an admitted fact on 26.03.2002 again the de-facto complainant/PW-2 went to the appellant's/accused office after complying with the earlier direction and handed over the application form to the appellant/accused. The duty of the appellant/accused who is the Village Administrative Officer was to fill up the application form and forward it to his higher officials. The appellant/accused received the same and filled up the application form as per the procedure mentioning the extent less than 40 cents which is the actual existence of land. The same was handed over to the P.W.2 instead of forwarding the completed application form to his higher officials for further course of action. The same was accepted by the P.W.2 during the course of cross examination. Therefore after completion of his work and after handing over the application form to the P.W.2, no work was pending with the appellant/accused. Pointing it out, the learned counsel for the appellant contended that there is no scope for any demand of bribe since no work was pending. In support of the same, he relied upon the ruling reported in 1998 CrI. L.J. 3155, wherein it has held as follows:-

" There is no motive for demanding or accepting bribe is proved as no work of the complainant was pending with the accused the acquittal of the accused by the trial court is justified"

Thus, in the case on hand also, as the accused has completed his work, there is no scope for making any demand for bribe.

12.Further it is argued that the Ex.P5 is the vital document on which the entire case of the prosecution rests. The same was handed over to P.W.2, which is revealed during cross-examination of P.W.2. As per the evidence of P.W.2 Ex.P5 was received on 26.02.2002 itself from the appellant/ accused. But the as per the evidence of P.W.10, he recovered the Ex.P5 on 30-03-2002 at the VAO Office Ambathukadavu, while the appellant/accused was in judicial custody. The above contradictory evidence would suffer the case of the prosecution.

13.Further it is argued that before registering a case that too in the cases of Prevention of Corruption Act, it is the duty of the trap laying officer/P.W.9 to make a preliminary investigation on the offence and then registration of the case is to be resorted to. In this case, admittedly, P.W.9 has not made any preliminary enquiry before the registering the case. P.W.P has not stated any thing in his evidence to show that he conducted preliminary enquiry in respect of antecedents of the appellant/accused. As such, the learned counsel for the appellant contended that failure to do so, is fatal to the prosecution case. In this regard, the learned counsel for the appellant/accused also relied upon the ruling reported in 1991 (1) Crimes at Page 243 and AIR 1971 SC Page 520.

14.The learned counsel for the appellant/accused also contended that there is no specific averments as to when where and what time the accused asked the complainant to meet him so as to make payment of the bribe amount sought by him. In the absence of any such specific averments, it is contended that the fact of demand and acceptance of bribe by the accused will stand un proved. The learned counsel for the appellant/accused relied upon the ruling reported in 1993 (2) Crimes 261, wherein it has held as follows:-

"There is nothing in any of the documents to show the date, time or place for giving and taking of the bribe nor is there anything in any of the documents or in any other evidence on record".

15.As per the prosecution case, the Entrustment Mahazar was prepared on 28.03.2002 at about 7.30 a.m., and the trap party proceed to the appellant/accused office at 11.25 a.m. However, as the appellant/accused was not in the office at that time they

waited up to 2.00 p.m. Then they left the place after knowing that the appellant/accused will not come to the office on that day. Thereafter they decided to execute the trap at the residence of appellant/accused at Malapalayam Thottam. As per the prosecution case, when the complainant contacted the appellant/accused through his residential phone at about 5.00 pm it was found out that the appellant/accused was not available in his residence. Again at about 7.00 pm when they contacted the appellant/accused was not in his residence. It is stated that thereafter P.W.2 contacted the appellant/accused at about 8.30 pm through phone and conveyed to trap laying officer that the appellant/accused has asked him to come to his house. Thereafter, at about 9.15 pm they went to the appellant/accused house and the trap was executed. The above version of the prosecution would prove that the appellant/accused has not asked the P.W.2 to come and meet him for receiving bribe amount. Apart from that the continuous attempting made by P.W.2 would show the evil intention of the P.W.2 for taking revenge due to previous enmity. Further as per the evidence on record, after handing over the amount to the appellant/accused, without any intimation to anybody, P.W.2 left from the scene of occurrence, which creates doubt about the credibility of the witness.

16.The official witness who accompanied the trap team while deposing as P.W.3 stated during his cross examination that P.W.2 Dilipan and the Trap Laying Officer decided to proceed to the house of the accused at 8.30 p.m., even though it was very dark, but he did not accompany them. Subsequently, P.W.3 stated in detail about the trap proceedings as if he went along with them. As P.W.3 has stated contradictory things, his evidence is to be looked with suspicion. If P.W.3 has not accompany the trap team, he cannot be an eye-witness for demand and acceptance of bribe by the appellant/accused. In such circumstances, there will be no corroborative evidence for P.W.2 version which was affected the case of the prosecution. It is also pointed out that P.W.3 has given contradictory evidence with regard to the witnessing of trap proceedings conducted against the appellant/accused. As such it is apparent that the prosecution has not established the factum of demand by the accused which will nullify the case of the prosecution.

17.According to the prosecution, P.W.2 approached the accused to effect name transfer of the patta relating to his Aunt Rajammal's property. However, the prosecution has not examined the said Rajammal as a witness to corroborate the evidence of complainant/P.W.2. The prosecution also failed to examine one Palani who is the menial in the concerned V.A.O. Office about the visit of P.W.2 and his interrogation with the accused wherein the demand and acceptance of bribe was done. In the absence of any explanation on the side of the prosecution for non examination of the above said persons, the contention of

the accused that no such demand and acceptance of bribe by the accused took place and that is the reason for non examination of the above said two persons appears to be just and acceptable.

18.From the above arguments this court finds that the entire story of PW-2 about the appellant/accused making demand for bribe for processing the application to get the Patta Pass Book in favour of Tmt.Rajammal has not been proved beyond reasonable doubt. The prevaricating statements of the witnesses PWs 2,3,4,7,9 and 10 is highly doubtful and improbable. The intention of PW-2 and PW-9 is evident from their strange conduct of registering the case in haste and rushing to Amandakadavu, the office of the appellant/accused, determined to trap the appellant/accused on that night itself. Hence the entire case of the prosecution appears doubtful and the guilt of the accused is not proved. Thus the benefit of doubt has to go in favour of the appellant/accused and the appeal is to be entertained.

19.In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge Cum Chief Judicial Magistrate, Coimbatore, in Spl.C.C.No.2 of 2003 dated 17.10.2007 is set aside and the appellant/accused is acquitted from all the charges and bail bond, if any executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg

To

- 1.The Special Judge cum Chief Judicial Magistrate,
Coimbatore.
- 2.The Inspector of Police,
Vigilance & Anti Corruption,
Coimbatore - 600 037.
- 3.The Public Prosecutor,
High Court,
Madras.
- 4.The Judicial Magistrate, Coimbatore.

5.The Superintendent of Police,
Central Prison, Coimbatore.

Copy To:
The Section Officer,
Criminal Section,
High Court, Madurai - 104.

+1cc to Mr.K.P.Gopalakrishnanan, Advocate, S.R.No.30970

rrg

Cr1.A.No.1002 of 2007

SSV(CO)

rrs 19/12/2018



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