BAIL SLIP

The Petitioners/Accused /Viz, 1.C.Periya Karupannan, 2.K.Kailya Perupal, 3.K.Shanmuga Sundaram, 4.M.Chandrasekaran, were released on bail as per the Order of this Court Dated 15/07/2011 in Crl.MP.No.1,1,1 & 1 of 2011 in Crl.Appeal Nos.438,439,440 & 452 of 2011 respectively, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.03.2018   Pronounced on:16.03.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Crl.A.Nos.438, 439, 440 & 452 of 2011

C.Periya Karuppan [A3] ...Appellant in Crl.A.No.438 of 2011

K.Kaliya Perumal [A2] ...Appellant in Crl.A.No.439 of 2011

K.Shanmuga Sundaram [A1] ...Appellant in Crl.A.No.440 of 2011

M.Chandra Sekaran [A4] ...Appellant in Crl.A.No.452 of 2011

/versus/

State rep. by Inspector of Police,
Vigilance and Anti Corruption,
Nagappattinam District.
(Crime No.1 of 2005) ... Respondent/Complainant in all the appeals.

Prayer in Crl.A.Nos.438, 439 and 440 of 2011:
Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment passed by the learned Chief Judicial Magistrate, Nagapattinam in Special Calender Case No.14 of 2006 dated 06.07.2011 and to set aside the same.

Prayer in Crl.A.No.452 of 2011:
Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment dated 06.07.2011 passed by the learned Chief Judicial Magistrate, Nagapattinam made in S.C.No.14 of 2006 by convicting and sentencing the appellant/accused A4 for the offences under Sections 7 & 13(1)(d) r/w 13(2) of Prevention of Corruption Act and the accused/appellant sentenced for the offence under Section 7 of Prevention of Corruption Act to undergo Rigorous Imprisonment for one year and to pay a fine of

Rs.1000/- in default to undergo Rigorous imprisonment three months and sentenced for the offence under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 to undergo rigorous imprisonment for two years and to pay a fine of Rs.1500/- in default to undergo rigorous imprisonment for six months. Total fine amount to be remitted by the accused Rs.2500/- the sentence of imprisonment for substantial offences will run concurrently.

For Appellant in Crl.A.No.438 of 2011 : Mr. B.Kumar, Senior Counsel for Mr.K.C.Panneerselvam

For Appellant in Crl.A.No.439 of 2011 : Mr.R.Rajarathinam for Mr.D.Vairamoorthy

For Appellant in Crl.A.No.440 of 2011 : Mr.R.Rajarathinam for Mr.M.K.Subramanian

For Appellant in Crl.A.No.452 of 2011 : Mr.S.Ashok Kumar, Senior Counsel for Mr.S.Sathiyamurthi

For Respondent in all the appeals : Mr.K.Prabakar Additional Public Prosecutor

------

COMMON JUDGMENT

These four appeals are against the judgment of Chief Judicial Magistrate, Nagapattinam in Special C.C. No.14 of 2006 dated 06.07.2011. The court below has held accused 1 to 4 guilty of offences under Section 7 and 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo one year R.I and fine of Rs.1,000/- each in default 3 months R.I for the offence under Section 7 of PC Act and sentenced to undergo one year R.I and fine of Rs.1,500/- each in default 6 months R.I for the offence under Section 13(1)(d) r/w 13(2) of PC Act,1988. The period of imprisonment for substantive sentence ordered to run concurrently. The period of remand already undergone was ordered to be set off.

2. Gist of the complaint:

On 14.01.2005, one Mr. Chandra Bose @ Bose (PW-6) was arrested by Nagapattinam Town Police under crime No. 225/2005 for offences under Tamil Nadu Prohibition Act. He was produced before the Judicial Magistrate, Nagapattinam on 15.01.2005 for remand. His brother Pandi @ Palthan Pandi (PW-2) and brother in law Manimaran (PW-3) came to know from the escort police Ravi (PW-8) that the authorities at Nagapattinam Sub-jail had informed that there is no space in Sub-jail so they may transfer the prisoner to Central Prison, Tirchy. To retain the remand prisoner Bose at Nagapattinam sub-jail, Pandi and Manimaran had gone to sub-jail and met warden Shanmugam and Kaliyaperumal and requested them not to transfer Bose to Central Jail, Tiruchy but to retain the remand prisoner Bose at Sub-jail so that it will be convenient for them to take care of him. For doing the said favour Shanmugam Warden (A-1) demanded Rs.1,000/- and Kaliyaperumal warden (A-2) spoken in support of A-1. When PW-2 said he his having only Rs.300/-, Shanugam demanded and received Rs.300/- as advance to the bribe amount of Rs.1,000/- and told PW-2 the balance Rs.700/- should be paid within 2 days.

3. On 17.01.2005, at about 11.00 am when PW-2 went to Judicial Magistrate Court, No 1 to attend a case, A-1 and A-2 came in civil dress and told him that his brother-in-law Manimaran is frequently visiting the prison and supplying cigarette, mosquito coils and eateries to the remand prisoner Bose, so for allowing these articles to the prisoner he has to give Rs.1,000/-. PW-2 agreed to give Rs.1,000/- and came out. Again on the same day evening at 5.45 pm PW-2 and PW-3 went to Sub-jail to see Bose (PW-6). When they came out from the prison, A-1 and A-2 followed them and told if bribe Rs.1,000/- is not given, they will transfer Bose to Trichy prison. PW-2 assured them that he will give the money through PW-3 and left the prison. Since PW-2 was not inclined to give bribe had approached Inspector of Police, DV&AC detachment at Nagapattinam Mr.M.Kuppusamy (PW-10) on 18.01.2005 and given a written complaint as stated above.

4. Gist of final report:

Based on the above said complaint Ex.P-2 was taken up for investigation in Crime No.1 of 2005 (FIR Ex.P-18). Two witnesses Mr.D.Mahendran (PW-5) and Mr.N.Radhakrishnan (not examined) were asked to be present during the trap proceedings. In the presence of the witnesses entrustment mahazaar was drawn after demonstrating the significance of phenolphthalein test. At about, 13.20 pm PW-3 and PW-5 went to Sub-jail, the other members of the trap team were waiting around the jail for pre-arranged signal. On receipt of the signal from PW-3, the trap team went inside the jail, before they entered the jail gate, PW-3 identified A-2 Kaliaperumal warden in civil cloth and told the trap laying officer PW-10 that he gave the tainted money to him.

5. The trap laying officer took A-2 along with him inside the prison, conducted phenolphthalein test on the hand fingers

of A-2 and the hand kerchief he had in the sodium carbonate solution and collected the samples. When enquired about the money received from PW-3, A-2 told that PW-3 gave the money to him and told that it should be given inside. When he gave it the Superintendent of Prison Periyakaruppan, he directed to gave the money to Chandrasekaran warden (A-4) as per the instruction of Periyakaruppan, Jail Superintendent (A-3) he gave the money to A-4. Thereafter, phenolphthalein test was conducted on the hands of A-4. He took out Rs.1,000/- from his shirt pocket and gave it the the trap laying officer saying that he received the money from A-2 since he was told that, A-3 asked him to keep the money. The tainted money and other incriminating material along with samples drawn from the wash of sodium carbonate solution were sealed and labelled. Mahazaar Ex.P-6 was prepared. Search of the residential premises of A-2 to A-4 was conducted no incriminating material were seized. Though, A-1 told PW-10 that he was not aware of the receipt of the money and he was looking after the auditing work and he never instructed A-2 to receive money or to give it to A-4, not satisfied with his explanation and being prima facie satisfied that A-2 to A-4 along with A-1 who was not on duty during the trap proceedings were involved in the crime of accepting bribe of Rs.1,000/- from PW-3, final report to try the accused A-1 to A-4 for offences under section 7 and 13(1)(d) of PC Act was filed on completion of investigation and obtaining sanction to prosecute A-1 to A-4.

6. The trial Court after considering the materials relied by the prosecution, framed charges under section 7 and 13 (1) (d) r/w 13 (2) of PC Act. Examined 12 witnesses for prosecution. 18 exhibits and 9 material objects were marked on the side of the prosecution. On the defence side no witness examined and no documents marked. The trial court on considering the evidence and rival submissions made by the prosecution and the defence has held the prosecution has proved the charges and sentences the accused A-1 to A-4 as mentioned above.

7. Aggrieved by the finding of the trial court appeals are filed by the respective accused separately as below:

Crl.A.No.438 of 2011 : C.Periyakaruppan -Appellant [A-3];

Crl.A.No.439 of 2011 : K.Kaliyaperumal-Appellant [A-2];

Crl.A.No.440 of 2011 : Shanmuga Sundaram-Appellant [A-1];

Crl.A.No.452 of 2011 : M.Chandrasekaran-Appellant [A-4].

8. Grounds of appeal:

The specific contention of the learned counsel appearing for the appellant in Crl.A.No.440 of 2011, Shanmugasundaram the 1st accused before the trial Court is that, admittedly he was not present in the sub-jail on the day of trap. He never demanded or accepted any bribe from PW-2 or PW-3. The prosecution has examined PW-2 and PW-3 to speak about the alleged demand of Rs.1,000/- on 15.01.2005 and acceptance of Rs.300/- as advance by the first accused. While PW-3 has been treated as hostile witness by the prosecution, PW-2 though has deposed incriminating A-1, had demolished the prosecution case in the cross examination by saying he does not know the content of the complaint. He was asked to sign the complaint by DV & AC Police. He and Manimaran (PW-3) were in the DV & AC office for 3 to 4 hours, niether of them accompanied DV & AC team to Sub-jail Nagapattinam. The lacunas in the evidence of PW-7 [Krishnamoorthy] and PW-8 [Ravisankar] were not properly considered by the trial Court. Therefore, without iota of evidence, the trial Court has convicted him.

9. The learned counsel appearing for the appellant in Crl.A.No.439 of 2011 Kaliyaperumal, the 2nd accused before the trial Court is that, the sanction to prosecute was according without applying mind. The demand and acceptance of money had not been proved by the prosecution. The witnesses for prosecution has either turned hostile or not supported the case of the prosecution particularly in respect of demand of money by A-2 along with A-1 on 15.01.2005. Even according to the complaint Ex P-2, it was A-1, who demanded bribe of Rs.1,000/- on 15.01.2005 and received Rs.300/- as advance.

10. The allegation of the prosecution regarding the receipt of Rs.1,000/- on 18.01.2005 by A-2 at the guard room of sub-jail, as spoken by PW-5 cannot be relied upon since it lacks corroboration and also in his cross examination, he admits that he obtained permission to visit the prison on that day and went along with Manimaran [PW-3]. While Manimaran has denied his visit to the prison on that day, the prosecution has not produced any document to show PW-3 and PW-5 visited the sub-jail on 18.01.2005. Further the chances witness PW-12, Manimaran (Auditor) has not said anything incriminating about A-2, hence he was also treated hostile. The inconsistancy in the prosecution version regarding the trail of the tainted money recovered from A-4 renders the case of the prosecution against A-2 doubtful. Mere presence of phenolphalein in the hand wash and hand kerchief of A-2 cannot be proof of demand and acceptance of bribe money.

11. The contention of the learned Senior Counsel appearing for the appellant in Crl.A.No.438 of 20011 Thiru.C.Periyakaruppan the 3rd accused before the trial Court is that, on 18.01.2005 the internal audit of the sub-jail was going on and he was with the auditor Manimaran (PW-12) showing records to him. He was not aware of the happenings which alleged to have took place in the guard room and elsewhere. While he was with the auditor, the trap team came to his room and asked every one in his room to stand at one place. There is no evidence to support the prosecution version that the money recieved by A-2 from PW-3 at the guard room was offered to him and he in turn directed A-2 to give the money to A-4 and upon his instruction A-4 received the money and kept in his pocket.

12. The case of the prosecution as found in the complaint or as spoken by the prosecution witnesses, there is nothing to show A-3 either demanded money or accepted money. Ex.P-6, the mahazaar alleged to have been prepared by Kuppusamy (PW-10) regarding the trap and recovery contains the explanations given by each of the accused. Except the exculpatory statement of A-4, nowhere else there is evidence to indicate that the money was received by A-4 on his direction. Therefore the trial Court has erred in holding A-3 guilty of offence under Sections 7 and 13 (1)(d) of the Prevention of Corruption Act, 1988.

13. The contention of the learned Senior Counel appering for the appellant in Crl.A.No.452 of 2011 Thiru.M.Chandrasekaran 4th accused before the trial Court is that, PW-1 [Vijayalakshmi] has accorded sanction to prosecute without application of mind. No satisfacatory evidence adduced by the prosecution to establish the case of demand of bribe to prove the charge under Section 7 of the Prevention of Corruption Act, 1988. The complaint of demand of bribe was not against this appellant. The prosecution witness PW-2 admits that his complaint is not against A-4. He never met A-4 earlier and A-4 never demanded any bribe from him. A-2 gave a bunch of currencies to him and told that the Superintendent has asked him to give. So, he received it and kept in his shirt pocket. When PW-10 enquired about the source of that money Rs.1000/- he has explained to him how he got the money. PW-10 in EX.P-6 mahazaar has recorded the explanation. The said explanation offered immediately after recovery of tainted money which form part of the mahazaar Ex.P-6 which in contemporaneous document has not at all given due consideration by the trial Court.

14. The learned Senior Counsel contented that, mere recovery of tainted money from the appellant is not a proof of offences

under Sections 7 and 13 (1)(d) of Prevention of Corruption Act. The prosecution witnesses does not prove the demand or acceptance of gratification other than legal remuneration by corrupt mean. The explanation offered is plausible and when plausible explanation offered for receipt of the money, the trial Court ought not to have presumed guilty relying upon the satutory presumption under Section 20 of the Prevention of Corruption Act, 1988.

15. Point for consideration:

Whether the evidence of prosecution sufficiently prove the trail of the tainted money to hold the appellants guilty of the offence ?

16. To prove the charge of demand and acceptance of gratification other than the legal remuneration by the accused persons, the warden and Superintendent of Sub jail Nagapattinam, the prosecution has examined 12 witnesses and marked 18 documents and 9 Material Objects. The demand for illegal gratification is to retain the remand accused PW-6 Subash @ Subash Chandra Bose in Sub-jail instead of transferring him to Central Jail, Trichy. The person concern PW-6 has no knowledge about the transaction which took place outside the prison. In the chief examination, he has said that he was provided food from the prison and food from outside.

17. The prosecution witness PW-5[D.Mahendran] says that the trap money was entrusted to PW-3 and he was asked to accompany PW-3 to sub jail, Nagapattinam on 18.01.2005. The trap team was also following them. On the way PW-3 purchased meals for the inmate [PW-6] and carried it to the prison. The food was delivered to PW-6 inside the prison and thereafter, the tainted money was handed over to A2. The fact which stars at our eye is the trail of tainted money which was entrusted to PW-3 on 18.01.2005 at about 12.30 p.m. at Vigilance Office was later recovered from A4 in the sub-jail, Nagapattinam at about 1.30 p.m.

18. P.W-3, to whom the bribe money smeared with phenolphthalein was entrusted in the trap proceedings had turned hostile. In his chief examination, he has denied knowledge about the case. Hence, he was treated hostile. P.W-5, who is the decoy witness, had deposed about the receipt of bribe money by A2 from PW-3 and recovery of the same from A4. The demand of bribe by A2 is spoken by PW-5. While so, the money, which was entrusted to PW-3 in the presence of PW-5 and others in the Vigilance Office at about 12.30 p.m., has been recovered from A4 at about 1.30 p.m., inside the sub-jail, Nagapattinam and the

said recovery is not disputed by any of the accused person. Without any human agency, the money which was smeared with phenolphthalein and numbers noted in the entrustment mahazar Ex.P4 at 12.30 hours, could not have reached the Sub-Jail. Therefore, though PW-3 has turned hostile, it is not necessary to reject the evidence of PW-5 and other witnesses in this regard, when their evidence are cogent and reliable.

19. The presence of phenolphthalein at the hands of A2 is proved. His handkerchief also been tested with sodium carbonate solution and it also found positive to the presence of phenolphthalein. Ex.P17 chemical analysis report in this regard lends support to the case of the prosecution. In Ex.P6 shows that A2 has given an explanation to the trap laying officer that PW-3 offered him money which he received and counted, then he asked why PW-3 gave him the money. When PW-3 told him that the money meant for some one inside, he gave back the money to PW-3 and told him to give it to them directly. The prison is not a public place, where any person can move around without any restriction. The explanation given by A2 that he received the money from PW-3 and thereafter, returned it back to him to hand over the same to the person concerned is very hard to believe.

20. Contrarily, explanation of A4 from whom the tainted money was recovered appears to be probable. He admits the receipt of tainted money and the recovery of the same from his possession. He has explained to the trap laying officer that he received the money from A2, since A2 told him that the money is given by the Superintendent of Police (A3). Whether A3 really directed A2 to give the money to A4 or not is matter for proof and from the evidence, it is difficult to hold that A2 gave the money to A4 on the instruction of A3. However, the fact that A2 received the tainted money from PW-3 and gave it to A4 is very well proved from the evidence let in by the prosecution. The sequence of events as told by the prosecution witnesses, there is no reason to disbelieve the evidence of PW-5 regarding the demand and receipt of gratification by A2 from PW-3. Similarly, the evidence of PW-12 (Manimaran) though treated as hostile by the prosecution for not supporting their case, his evidence to the fact that money was recovered from A4, is undisputed.

21. Thus, from the evidence placed by the prosecution, the fact which is proved beyond doubt is receipt of tainted money by A2 and recovery of the same from A4. Now it is to find out whether the money was received by A2 in pursuant to the demand made earlier and whether the money is gratification other than the legal remuneration received by A2 by corrupt means abusing his official position.

22. A2 is Warden attached to Sub Jail, Nagapattinam. Ex.P5 is the First Information Report copy of the case registered against Bose @ Chandra Bose (PW-6). It is an admitted fact that PW-6 is the remand prison at Sub Jail, Nagapattinam, where A2 is working as Warden. PW-2 and PW-3 are not unknown person to A2. They being jail birds and frequent visitors of the prison, they acquaintance with A2. On the day of trap, A2 was not in uniform, which indicates he was not in duty but he had been in the jail campus. PW-5 is the eye witness for the receipt of tainted money by A2. His evidence in this regard is unimpeached. In the explanation as found in Ex.P6, this Court finds that A2 admits the receipt of the money from PW-3 but he had stated that he returned back the money to PW-3. The said admission and the presence of phenolphthalein in his hand and handkerchief proves the fact that the tainted money was handled by him. There is no reason for the jail Warden to receive Rs.1000/- from a relative of inmate and allow him go freely inside the prison and deliver the food to the inmate. In the absence of plausible explanation for the receipt of the tainted money, the presumption under Section 20 of Prevention of Corruption Act, 1988 squarely applies against A2. Therefore, this Court holds that A2 is guilty of Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

23. In the result, Crl.A.No.439 of 2011 filed by A2 K.Kaliya Perumal is dismissed. The judgment of conviction against him in C.C.No.14 of 2006 dated 06.07.2011 on the file of the Chief Judicial Magistrate, Nagapattinam is hereby confirmed. The period of substantive sentence is ordered to run concurrently. The period of sentence already undergone by A2 shall be set off. The trial Court is directed to secure the accused to undergo the remaining period of sentence.

24. As far as A4[M.Chandrasekaran] is concerned, the tainted money has been recovered. However, he has given some explanation, why he received the money and from whom he received the money. No evidence produced by the prosecution to show that A4 has received the money from A2 knowing that it is an illegal gratification or evidence to show that A4 has demanded illegal gratification. Therefore, this Court holds that the prosecution has not proved the charges against the appellant/A4 beyond doubt. The trial Court has erred in holding A4 guilty of offence merely because of the tainted money recovered from him. The explanation given by A4 ought to have been taken note by the trial Court. In the light of the fact that A4 had never been in contact with the defacto complainant or had any role in retaining the inmates of PW6 in sub-jail. The judgment of the

trial Court is liable to be interfered.

25. In the result, Crl.A.No.452 of 2011 filed by A4 M.Chandrasekaran is allowed. The judgment of conviction dated 06.07.2011 in S.C.No.14 of 2006 on the file of the Chief Judicial Magistrate, Nagappattinam is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant is cancelled. The appellant is set at liberty unless his presence is required in connection with any other case.

26. As far as A1[K.Shanmuga Sundaram] is concerned, it is unfortunately that merely based on the version of PW-2 in the complaint that A1 along with A2 demanded illegal gratification and A1 has received Rs.300/- as advance on 15.01.2005, the prosecution has arrayed him as an accused, though he was not present in the scene of occurrence on 18.01.2005, when the tainted money was recovered in the sub jail premises from the possession of A4. When there is no specific charge against A1 for receipt of Rs.300/- as bribe and when no witness has spoken about the demand of bribe by A1, the conviction against A1 has to be set aside. The trial Court judgment in this regard is improper and liable to be set aside.

27. In the result, Crl.A.No.440 of 2011 filed by A1 K.Shanmuga Sundaram is allowed. The judgment of conviction dated 06.07.2011 in S.C.No.14 of 2006 on the file of the Chief Judicial Magistrate, Nagappattinam is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant is cancelled. The appellant is set at liberty unless his presence is required in connection with any other case.

28. As far as A3[C.Periya Karuppan], who is the Superintendent of Prison, Sub Jail, he has given his explanation that he was involved in the Audit duty and he had no knowledge about any of the transaction of demand or acceptance of bribe money Rs.1000/- which was later recovered from A4. His evidence is supported by the evidence of PW-12 (Manimaran). It is the case of the prosecution that as per the direction of this accused, A2 gave the money to A4. Except the statement of A4, explaining the reason for possessing the tainted money there is no other evidence to substantiate the allegation. What is stated by A4 is the justification for possessing the tainted money. That cannot be pitted against A3 in the absence of corroboration. There is no other evidence to prove that A3 directed A2 to hand over the money to A4. It is even possible

that A2 himself could have directly given the money to A4.

29. To prove this fact the prosecution wanted to rely upon PW-12 (Auditor) who was present in the Superintendent room during the trap proceedings. Unfortunate to the prosecution, PW-12 has not deposed anything incriminating A3. Therefore, the finding of the trial Court that the trail of the tainted money from PW-3 to A2 and A2 to A4 as per the instruction of A3 is not substantiated. A3 in the chain of transferring the tainted money, is not corroborated or supported by any substantial evidence. Hence, this appeal is liable to be allowed.

30. In the result, Crl.A.No.438 of 2011 filed by A3 C.Periya Karuppan is allowed. The judgment of conviction dated 06.07.2011 in S.C.No.14 of 2006 on the file of the Chief Judicial Magistrate, Nagappattinam is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant is cancelled. The appellant is at liberty unless his presence is required in connection with any other case.

31. In the result,

Crl.A.Nos.438, 440 and 452 of 2011 are allowed. Crl.A.No.439 of 2011 is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ari
To
1.The Chief Judicial Magistrate, Nagapattinam.
2.The Inspector of Police, Vigilance and Anti Corruption, Nagapattinam District.
3.The Public Prosecutor, High Court, Madras.

4.The Section Officer
Criminal Section High Court, Chennai-104

+1 cc to M/s.P.Palaninathan Advocate sr 20903
+1 cc to M/s.D.Vairamoorthy Advocate sr 20323
+1 cc to M/s.M.K.Subramanian Advocate sr 20324
+1 cc to M/s.K.C.Panneer Selvam Advocate sr 20325

Crl.A.Nos.438, 439, 440 & 452 of 2011

rr(co)
aa03/04/2018