

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 21.12.2017	Date of Pronouncing Judgment 02.01.2018
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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No: 63 of 2011

State represented by
The Inspector of Police,
Vigilance & Anti Corruption,
Coimbatore.
(Crime No.13/2004)

...Appellant

versus

V.Annasamy

...Respondent

PRAYER: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, against the Judgment dated 15.10.2010 in Special C.C.No.9 of 2005 on the file of the Hon'ble Chief Judicial Magistrate cum Special Judge, Coimbatore and pray that this Hon'ble Court may be pleased to set aside the Judgment of acquittal and convict the Respondent/Accused for offences under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

For Appellant : Mr.P.Govindarajan
Additional Public Prosecutor
(Criminal Side)

For Respondent : Mr.K.R.Sankaran

J U D G M E N T

This Criminal Appeal against acquittal preferred by the State on the ground that the trial Court has not properly appreciated the evidence let in by the Prosecution. Relying upon the evidence of the defence witness who is close to the Accused/Respondent and a dependant of him, had acquitted the accused overlooking the fact. The prosecution had proved the receipt of tainted money by the accused as illegal gratification and there is no plausible explanation from the respondent to rebut the presumption against him.

2. The brief facts of the prosecution case:

2.1) The respondent herein while serving as Sub Registrar at Anaimalai Registrar Office demanded bribe of Rs.3200/- from one Sugumar on 13.08.2004, when he got a property registered pursuant to the decree passed in his favour by the Court in his suit for specific performance. When the sale deed was executed on 13.08.2004 pursuant to the decree passed by the Sub Court, Pollachi, it is alleged that the respondent demanded Rs.1200/- for travel expense to inspect the property at Valparai and Rs.2000/- as illegal gratification.

2.2) Since, the defacto complainant is not inclined to give bribe he lodged a complaint on 23.08.2004 to the Vigilance and Anti Corruption Police. Pursuant to the complaint, trap has been laid by PW8 on the same day and the tainted money of Rs.1000/- recovered from the possession of the respondent. Based on the Final Report, the trial Court took cognizance of the case and had tried the accused for offences under Sections 7 and 13(1)(d) of PC Act.

3. On the side of the prosecution ten witnesses have been examined, fourteen exhibits has been marked and seven material objects were marked. On the side of the defence one witness and two documents were marked.

4. The trial Court after considering the evidence has acquitted the accused. Aggrieved by the order of acquittal the present appeal is filed.

5. The defacto complainant is examined as PW2 and his written complaint is marked as EX.P3. As per the complaint, the defacto complainant Sugumar went to the Sub Registrar Office at Anaimalai along with Court Staff on 13.08.2004 to register a sale deed, which is marked as EX.P2. This registration of Sale is pursuant to the decree passed by the Sub Court, Pollachi in a Civil Suit. After completion of registration, the Sub Registrar - Annasamy (Accused) had told PW2, that the registration work is over, but he had not given the money which he deserve. For which the defacto complainant has told him that, since the sale deed is pursuant to Court decree his Advocate has instructed him that it is sufficient to pay of Rs.2100/- as fee and nothing more to spend, therefore he has not brought any extra money with him.

6. The accused in response, had told the defacto complainant that you have paid for the Government, for him he should pay Rs.2000/- and for inspecting the place at Valparai he should give Rs.1200/- towards taxifare. When the defacto complainant told him, that he has not brought any money, and said he will give the money on the day when he come to Valparai for

inspection. For which, the accused has informed PW2, that he is going to Chennai and he will back after one week and attend the Office only on 23.08.2004. So, on that day he should give Rs.1000/- and the balance to be given after inspection. This complaint of demand of bribe on 13.08.2004 has been lodged before the Police on 23.08.2004 and on the same day after completion of the Entrustment Mahazar EX.P5. The defacto complainant along with decay witnesses and the Trap team had gone to the Sub Registrar Office, Anaimalai.

7. The evidence of Mr.Sugumar PW3, the defacto complainant and the accompanying witness Paramasivam PW6 discloses the fact that on 23.08.2004 at about 04.00 P.M they went to the Sub Registrar Office and met the accused. The accused had demanded, whether PW3 has brought the money. Immediately, PW3 Sugumar has given the tainted money Rs.1000/- to him. The accused had received the money, counted it and kept the tainted money in his shirt pocket. The Mahazar prepared on the spot, is marked as EX.P6 and it disclose, that after receiving the pre-arrange signal the trap team has gone to the seat of the accused. After interrogating him and conducting Phenolphthalein test by dipping the accused right and left hands in the Sodium Carbonate solution, separately they found it turned pink and therefore solution were collected for Chemical analysis. Thereafter, the tainted money of Rs.1000/- had been recovered from the accused, which he had kept in his shirt pocket separately.

8. The receipt of Rs.1000/- from PW3 and recovery of the same from his possession is admitted by the accused/respondent. The explanation given by him for the said receipt of money is that, the property which the defacto complainant registered was found under-valued. While the guidance value of the property was Rs.115/- per sq.ft. PW3 has valued the property, at the rate of Rs.54/- per sq.ft. Therefore, the defacto complainant was informed that he should pay stamp duty as per guidelines value and is liable to pay the deficit stamp duty. A1 told PW2 that if he is agreeable for that, if he will come for inspection to value the building. If the defacto complainant is not agreeable to pay the differential stamp duty for the land value, then he will straight away refer the matter for adjudication and there is no necessity for him to inspect the building to ascertain its value. The defacto complainant therefore left the place and came back on 23.08.2004 and said that he will pay Rs.1000/- for the present toward deficit stamp duty and pay the balance later. The accused received that money and asked the defacto complainant to give a requisition letter in writing, that he will pay the deficit stamp duty in installment. Under the pretext of preparing the requisition letter, PW3 went outside and came along with trap team.

9. This explanation of the accused is reflected in the

recovery mahazar. Further the trap laying Officer PW8 admits about the explanation given by the accused person for receipt of the money from the defacto complainant. PW10, who is the Successor in Office to the accused in his deposition has stated that there was deficit stamp duty and the property was under valued. Hence, after inspection of the property he levied differential stamp duty to be collected and same has been paid by the defacto complainant. The defacto complainant also in his evidence admits the fact that he has paid the difference in stamp duty in two parts, initially Rs.11,000/- and later Rs.1523/-.

10. The trial Court taking note of the delay in lodging the complaint and the plausible explanation given by the accused person for the receipt of the money had acquitted the accused. Holding that the money received by the accused person does not fall within the meaning of illegal gratification.

11. The learned additional public prosecutor appearing for the appellant tried to point out certain lacuna in the appreciate of the evidence by the trial Court and the undue reliance laid on the DW1 evidence by the trial Court.

12. This Court of the opinion that the evidence of DW1 and PW1 as well as PW10 strengthen the explanation given by the accused person for the receipt of the money during the recovery, which is recorded in the recovery Mahazar. Admittedly, the value of the property as per the document EX.P2 is shown as Rs.54/- per sq.ft and whereas the guidance value as on date was Rs.115/-. For any land with building to verify whether it has been valued properly and duly stamped, inspection of the property is mandatory. If the value is shown below the guideline value, under Section 47A(1) of the Act, the document has to be impounded and forwarded to Assistant Collector (Stamp). PW1, the sanctioning authority, admit that if it is building inspection of the building to verify its value is must. In this case, admittedly the land value has been shown lessor than the guidance value. The property being situated at Valparai, inspection of the building to assess its value is mandatory and that is what the accused has informed PW1.

13. In his response to Section 313 Cr.P.C questioning the accused has recorded that, since, the property is located at Valparai, the accused has given option to the defacto complainant, whether he wants him to inspect the building, admitting the under valuation of the land and pay the difference stamp duty or he wants to straight away refer the document for adjudication. Since, there was some dispute between him and the defacto complainant on 13.08.2004 regarding the under valuation of the property registered through Court decree the complaint has been lodged after 10 days alleging demand of bribe. Under

the pretest of paying part payment towards difference in stamp duty trap has been laid. When this explanation is plausible and appears to be true in view of the evidence let in by the prosecution and the defence, there is nothing perverse in the finding of the trial Court. Further, more when two views are possible and the trial Court has taken the view in favour of the accused person, in the appeal the said view need not be interfered, more so, when no illegality or perversity could be pointed by the prosecution.

14. In the result, the Criminal Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Hon'ble Chief Judicial Magistrate
cum Special Judge, Coimbatore.

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

+1 cc to M/s.K.S.Karthik Raja Advocate sr 184

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