CRL A.805/2011

K.S.Kallinga Rayan @ Kalingaraju, accused in Speciall CC.No. 1 of 2014 on the file of Special Judge, Special Court for cases under prevention of Corruption Act Coimbatore was directed to be released on bail as order dated 15/12/2011 in Crl.Mp.No.1 of 2011 in Crl.A.No.805/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2018	Pronounced on: 25.06.2018

CORAM:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.805 of 2011

K.S.Kalinga Rayan @ Kalingaraju ... Appellant/Accused

/versus/

State, rep. by Inspector of Police,
Vigilance and Anti Corruption Special Team,
Coimbatore. ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code, to set-aside the conviction imposed on the appellant/accused by Judgment dated 23.11.2011, passed by the learned Special Judge Court for cases under Prevention of Corruption Act, Coimbatore, in Special CC.No.1 of 2011 in Crime No.5/2003/AC/CB on the file of the respondent police.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel
for Mr.K.S.Karthik Raja

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor.

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J U D G M E N T

This Criminal Appeal is filed by K.S.Kalinga@Kalingaraju appellant/accused in Special CC. No.1 of 2011, dated 23.11.2011 on the file of the learned Special Judge, Special Court for [Prevention of Corruption cases], Coimbatore.

Brief facts of the case:

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2. The appellant/accused K.S.Kalinga Rayan@Kalingaraju, while serving as Accountant-cum-Clerk on the Sub Treasury Office, Pollachi Taluk, Coimbatore district from 08.06.1995 till 10.02.2003. He was in-charge of dealing pension pass book papers of retired Government servant. The defacto complainant Kalimuthu who retired as Head Constable on attaining superannuation on 31.03.2002 met the appellant/accused on 06.02.2003 for receiving his pension computation. On production of AG's Office letter, pension payment order book and intimation letter of Sub treasury, Pollachi to the accused, he verified and issued token for receiving the computation amount of Rs.1,23,889/- [Ex.P.7]. While issuing the token for computation order, the accused has demanded illegal gratification of Rs.1,500/- and directed Kalimuthu [PW.2] to encash the computation amount and pay Rs.1,500/- and get back his pension payment order book. After depositing the computation amount, in his Savings Bank Account Kalimuthu [PW.2] came back to the Sub Treasury and requested the appellant/accused to return the pension order book. The appellant/accused reiterated his demand of illegal gratification of Rs.1,500/- and told Kalimuthu [PW.2] to bring the money on the next day i.e., 07.02.2003 and get back his pension pay order book. Unwillingly to give bribe, Kalimuthu [PW.2] had given a written complaint [Ex.P.2] to Inspector of Police, Vigilance and Anti Corruption, Coimbatore. Mr.Sathasivam [PW.7], Inspector of Police, Vigilance and Anti Corruption, Coimbatore had received the complaint, registered the F.I.R and arranged for the trap. In presence of two Official witnesses Mr.Rangasamy and M.Durarisamy, he demonstrated the significance of the phenolphthalein test and entrusted the bribe money of Rs.1,500/- smeared with phenolphthalein to PW.2 and prepared the entrustment mahazar [Ex.P.4]. PW.2 [Kalimuthu] along with Rangasamy [PW.3] went to the Sub Treasury Office, Pollachi. The accused demanded and accepted Rs.1,500/- as bribe and returned the pension pass book to the defacto complainant [PW.2]. Thereafter, on receiving the pre-arrange signal, the trap team has caught the accused/appellant red-handed, the tainted money was recovered from his possession. The recovery mahazar narrating the sequence of event was prepared and the accused was arrested for demand and acceptance of illegal gratification of Rs.1,500/-.

3. On completion of the investigation and obtaining sanction order from Thiru.Murugesan, District Treasury Officer, Coimbatore the final report laid to try the accused. The trial Court has farmed charge under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988 against the accused/appellant.

4. To prove the case, the prosecution has examined 8 witnesses, marked 16 exhibits and 7 material objects. In

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defence, the accused has examined himself and one Chinnasamy. 4 Exhibits were marked on his behalf.

5. PW.1 [Murugesan] the Officer competent to remove the accused had deposed about the sanction order Ex.P.1 which he issued after perusal of records and application of mind. PW.2 [Kalimuthu] the defacto complainant had spoken about his complaint [Ex.P.2], demand of illegal gratification of Rs.1,500/- by the accused on 06.02.2003 after issuing the token for receiving computation amount and the reiteration of the demand at 1.15 pm on the same day. When he asked the accused to return his pension pass book and communications received from Treasury and AG's Office, he demand illegal gratification of Rs.1,500/- to pay on the next day and get back the pension pass book. He has spoken about the complaint [marked as Ex.P.2] given by him to the Vigilance and Anti Corruption, Inspector, Coimbatore. The pre-trap proceedings and entrustment mahazar marked as Ex.P.3. Demand and acceptance of bribe of the accused on 07.02.2003 and had identified the bribe money M.O.1.

6. PW.3 [Rangasamy] Selection Grade Assistant at Director of Collegiate Education had deposed about the direction given by his Joint Director to report before the Vigilance and Anti Corruption, Inspector on 07.02.2003 at 7.30 am and his participation in the demonstration of phenolphthalein test and witnessing the entrustment of bribe money to PW.2 which was smeared with phenolphthalein. He has identified the entrustment mahazar [Ex.P.4]. He had deposed regarding his presence at sub Treasury Office, Pollachi along with the accused at 10.35 am and witnessing the demand of illegal gratification of Rs.1,500/- by the accused and the accused receiving the same from PW.2 and placing it inside the left side safari shirt. He has further deposed about the arrival of trap team on receiving the agreed signal and apprehension of the accused by the trap team. He has spoken about the recovery of tainted money of Rs.1,500/- [M.O.1 series] from the accused and the post-trap proceedings. The recovery of white colour cover on which the accused has made a noting about reduction of pension and the mahazar prepared in respect of recovery which are marked as Ex.P.5 and Ex.P.11 respectively are identified by this witness. The recovery of file containing the records of PW.2 pension are Ex.P.6, Ex.P.7 and Ex.P.8.

7. PW.4 [Nadhan] Accounted at Sub-Treasury had spoken about the arrest of the accused by the Vigilance and Anti Corruption Police on 07.02.2003 for receiving bribe of Rs.1,500/-.

8. PW.5 [R.Banumathi] is the Scientific Officer attached to Tamil Nadu Forensic Department who has spoken regarding the chemical analysis done on the solutions collected during the trap and its result. According to her evidence, the

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solution bottle containing samples drawn from left and right hand wash of the accused and the shirt pocket wash of the accused which are marked as M.O.'s 4 to 6 respectively proved positive for the presence of phenolphthalein.

9. PW.6 [Rangasamy] Head Clerk of Coimbatore Chief Judicial Magistrate Court, Coimbatore had deposed about the request received from the investigation officer for forwarding the sample solutions for chemical analysis and his letter to the State Forensic laboratory, requesting to analysis the samples.

10. PW.7 [Sathasivam], Trap Laying Officer who had spoken about the receipt of the complaint [Ex.P.2] preparation for trap, entrustment mahazar, recovery of tainted money from the accused and other documents like pension pass book, communications regarding the pension and computation of Kalimuthu, recovery of shirt marked as M.O.7 in which the accused had kept the tainted money and the mahazar drawn for seizure of other incriminating materials.

11. PW.8 [Ramachandran], Deputy Superintendent of Police who had taken up the further investigation from [Sathasivam] PW.7 had spoken about the examining of witness, receipt of sanction order and filing of final report.

12. In defence the accused has examined one Chinnasamy as DW.1 who was the A5 Assistant of Pollachi, Sub Treasury Office during the trap. He had deposed that on 06.02.2003, he issued token and made entry in the MTC 70 A Register. The entry made by him MTC 70 A Register is marked as Ex.D.1. To disprove the case of the prosecution that the accused issued token to the defacto complainant and demanded Rs.1,500/- as bribe, this witness has given a contra evidence that he [DW.1] issued the token to the defacto complainant and made the necessary entry in the MTC 70 Book. The accused has mounted the witness box and examined himself as DW.2. He had deposed that from the AG's Office order he found that the pension of the defacto complainant had been reduced by Rs.50/- and the excess of Rs.222/- paid for the three months to be deducted from his February Month pension. When this was informed to the defacto complainant he got infuriated and picked quarrel with. After receiving the computation order [Ex.P.7] the defacto complainant left the Office and again he came back at about 3.30pm and sought for the communication sent by Treasury Office and the computation order sent by AG's Office. Since, they are required to be maintained at Treasury Office, he refused to give those documents to the defacto complainant. On a mistaken belief that his pension was reduced by the accused, the defacto complainant picked quarrel with him and threw the pension pass book and left the Office. The accused took the pension pass book and handed it over to the Assistant Treasury Officer and

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explained the incident. The next day (07.02.2003) at about 11.00am the defacto complainant came and asked for his pension pass book. When he went to the Assistant Treasury Office room to collect the pension pass book, the accused has planted the tainted money in between the files on his table. After receiving the pension pass book the accused took a white colour cover and asked to read the content in the cover and write about it in the cover so as to explain his wife why pension has been reduced. At his request, he wrote that SP pension has been reduced in the red colour ink and gave back the cover. Within one or two minutes Kalimuthu came back with four or five persons who he later came to know as policemen of Vigilance and Anti Corruption. On the information of PW.2 the team took out the tainted money concealed inside the file kept on his table and foisted the case.

13. After considering the above said evidence, on the side of the prosecution and the defence, the trial Court had accepted the case of the prosecution and convicted the accused for offence under 7 and 13(2) to undergo two years R.I and fine of Rs.400/- in default four months R.I for offence under section 7 and three years R.I and fine of Rs.6,000/- in default 6 months R.I for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

14. Aggrieved by the judgment of conviction the present appeal is filed on the ground that the trial Court judgment is based on misconception of fact. The trial Court has failed to note that the defacto complainant had strong motive against the appellant to give false complaint and false evidence, in order to wreck vengeance against him since the defacto complainant had erroneously believed that the pension amount has been wrongly calculated by the appellant and because of that his pension has been fixed lower than what he is entitled. The prosecution has failed to prove that on 06.02.2003, there was demand of illegal gratification. The tainted money was not recovered from the possession of the appellant, but stealthily kept by the defacto complainant under a file, while the appellant was not present in his seat. It was found and recovered by the trap laying officer later when there is no evidence to prove the demand as well as the acceptance, the trial Court ought not to have held the appellant guilty of receiving illegal gratification, the defence witnesses and the exhibits relied on by the appellant were not at all considered by the trial Court, which will disprove the complaint of the defacto complainant that on 06.02.2003 when the appellant, gave the token he retained the Pension Payment Book of the defacto complainant, as a security for getting the bribe money. The plausible explanation given by the appellant that on 06.02.2002 when the defacto complainant met the appellant, he perused the pension computation papers and found that the certain amount has

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not been given credit to the pension account. Therefore, the defacto complainant will be receiving lesser pension than what he deserves. When this was pointed out to the defacto complainant, he demanded the appellant to rectify the same. Since such rectification or alteration is out side the purview of appellant's power and the A.G.'s office at Chennai can alone make the necessary change, the same was informed to the defacto complainant. But the defacto complainant had grudge over the appellant for pointing out the error and had given the false complaint.

15. It is contended by the learned counsel for the appellant that DW.1 has deposed on 06.02.2003 when the defacto complainant met the appellant he after perusing the records, prepared the document and forwarded it to accountant who has issued the pass order and forwarded it to Assistant Treasury Office. DW.1 has deposed in the cross examination that on 07.02.2003 he saw Kalimuthu the defacto complainant talking with accused. When the accused went to the Assistant Treasury Office room Kalimuthu was meddling with the files on the accused table. He reprimanded PW.2 for meddling the file in the absence of the accused. After some time, he came along with the Vigilance and Anti Corruption Police. The evidence of DW.1 and the evidence of DW.2 who had narrated about the animosity would show the gurge wrongly entertained by the PW.2 which had made him to give a false complaint to Vigilance and Anti Corruption. He had planted the tainted money in between the file which was asked by the Trap Laying Officer to be handled by the accused and thereafter, phenolphthalein test was conducted which has proved positive due to handling of tainted money innocently by the accused on the direction of the Trap Laying Office.

16. Further, relying upon the entries made in pension paper of the defacto complainant, the learned counsel for the appellant would submit that the communication from the Treasury and the AG's Office had been taken note of by the appellant and the Assistant Treasury Officer. Since AG's office has reduced the pension of PW.2 from Rs.2518/- to Rs.2468/- note was prepared to recover the excess money paid to PW.2 from his February month pension. When this was communicated to PW.2 he threw away the pension book and left the sub treasury office on 06.02.2003. He came back on the next day under the pretext of collecting the pension pass book. Planted the tainted money in the absence of the accused. DW.1 had positively spoken that the token for commutation order was issued by DW.1 Chinnasamy, Cashier and he also made necessary endorsement in the MTC 70 A register marked as Ex.D.1. The case of the prosecution that the token was issued by the accused and he retained the pension pass book demanding Rs.1,500/- gets falsified from the evidence of DW.1, DW.2 and the entry made in Ex.D.1. Contending that the trial Court has miserably failed to consider the evidence let in

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by the prosecution and the explanation given by the accused by way of examining himself and DW.1 in an holistic manner, the trial Court judgment deserved to be reserved.

17. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit in his written argument that the prosecution has proved the guilt of the accused through his witnesses and exhibits which has been discussed elaborately by the trial Court.

18. The evidence of PW.2 and PW.3 regarding the demand and acceptance of bribe by the accused on 07.02.2003 stands unassailable. The explanation of the accused that on 07.02.2003, PW.2 came alone to collect his pension pass book does not hold water. In view of evidence of PW.3 and the trap laying Officer and in the seizure mahazar which was prepared contemporaneously the prosecution has proved the demand and recovery beyond doubt. The self serving statements of the accused that he did not demand any money from PW.2 either on 06.02.2003 or 07.02.2003 have no legs to stand. While demand and acceptance has been proved to the testimony of PW.2 and PW.3, the recovery of money from the accused possession which was kept in his safari shirt pocket had been spoken through PW.3 decoy witness and PW.7, the trap laying officer. Further, the phenolphthalein test conducted on the spot as well as in the laboratory had proved positive for the presence of phenolphthalein in the hand of the accused and shirt pocket of the accused. The evidence of DW.1 and DW.2 to doubt the recovery of tainted money from the possession of the accused is unbelievable and self serving.

19. Further, the learned Additional Public Prosecutor would submitted that, the theory of motive alleging that PW.2 quarrelled with the accused/appellant on 06.02.2003 and threw way his pension paper and left the Sub Treasury Office is unbelievable. No prudent person much less a senior citizen who depends upon the pension is likely to throw away his pension paper quarrelling with the staff at Sub Treasury Office. Further, if the explanation of the accused to be accepted, then on the next day the accused could not have entertained the defacto complainant and allowed him to sit near his table and leave his seat.

20. The trial Court had in detailed analysised the evidence of the prosecution as well as the explanation given by the accused in his judgment particularly at paragraph 13, 14, 16 and 17. Therefore, the appeal is liable to be dismissed.

Points for consideration

> "Whether the explanation of accused is plausible and sufficient to dislodge the case of the prosecution."

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21. The admitted facts in this case is that, the defacto complainant retired from service on 31.10.2002 as Head constable and received communication from AG's Office on 06.01.2003 intimating about the payment of pension computation of Rs.1,23,889/-. This communication of AG's Office was followed by letter from Sub-Treasury directing him to present his pension papers to the Sub Treasury for further proceedings. Accordingly, on 06.02.2003 PW.2 had gone to Sub Treasury Office and had met the appellant. He had given the relevant papers to the appellant. The token for collecting the money from State Bank of India Pollachi, had been issued to PW.2. According to the prosecution, it was the accused who gave the token to PW.2 whereas through DW.1 the accused claim that the token was given to PW.2 by DW.1. But the facts remains that on 06.02.2003 only token for computation amount given to PW.2 and all other papers including pension pass book had been retained at Sub-Treasury.

22. The case of the prosecution is that these documents were retained by the accused and he has told PW.2 to bring Rs.1,500/- on 07.02.2003 and collect the papers. Whereas the explanation of the accused is that PW.2 had quarrel with him for reducing the pension amount by Rs.50/- and threw away the pension paper. The other communications such as letter from AG's Office and Sub Treasury are not to be returned to PW.2 but has to be kept in the relevant file. As pointed out by the trial Court no person with more than 30 years of Government service will find fault with the Accountant at Sub Treasury for reduction of his pension by AG's Office. The communication of reducing the pension from Rs.2518/- to Rs.2468/- had emanated from A.G's Office and sent through the Treasury Office. It is addressed to the pensioner namely Kalimuthu [PW.2]. It is he who has produced the computation order of AG's Office to the Sub Treasury. Therefore, there is no reason to suspect the accused for reduction of the pension as claimed by the accused. While so, there is no scope for quarrelling with the accused on this score and throw the pension paper on the floor and leave the Sub Treasury.

23. Furthermore, the accused would say that to collect the pension pass book from him, PW.2 came to the office in 07.02.2003. He offered him a stool to sit and left his seat to collect the pension pass book of PW.2 which he has handed over to the Assistant Treasury Officer the day before. When he came back with the Pension Pass book he say PW.2 meddling the files on his table.

24. It is pertinent to point that if really such an episode happened on 06.02.2003 at Sub Treasury Office, the other staff at the Sub Treasury Office would have witnessed it. PW.4 and DW.1 who were present on the 06.02.2003 when PW.3 visited the Sub Treasury Office have not whispered about such episode. In fact they deny any knowledge of such episode.

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According to the accused who had deposed as DW.2, immediately after PW.2 threw his pension pass book, he collected it and handed it over to the Assistant Treasury Officer. On the next day when PW.2 asked for his Pension Paper book, he went to the Assistant Treasury Office room, collected from him and handed over to PW.2. To establish this fact the Assistant Treasury Officer is a necessary witness who would have spoken about whether the pension pass book of PW.2 was in his custody between 06.02.2003 from about 3.30pm till 07.02.2003 at 11.00am. The prosecution witness PW.2 would say that the accused retained the pension pass book on 06.02.2003 and told him to collected the pension pass book after receiving Rs.1,500/- as bribe. On 07.02.2003 at about 11.45a.m, when he met the accused, he asked him to sit on the stool next to his seat and opened the steel bureau and took out the pension pass book. After demand and receipt of Rs.1,500/- bribe, he gave the pension pass book. PW.3 the accompanying witness also corroborate the evidence of PW.2 in this regard. When prosecution has lead clear and clinching evidence regarding demand of bribe by the accused and handing over the pension pass book which was kept in his steel bureau after receiving the bribe amount of Rs.1,500/-. Contrarily by way of defence DW.1 and DW.2 are examined. The evidence of the accused and the testimony of DW.1 a colleague of the accused does not carry the trappings of a plausible explanation regarding custody of the Pension Pass Book or for the motive. When the prosecution would establish the demand and acceptance of money by the accused, the explanation given by the accused that the money was planted on his table does not carry merit and does not provide answer for the presence of phenolphthalein in his hands and shirt pocket. Therefore the finding of the trial Court holding the accused guilty deserves no interference.

25. This Court is fully concious of the settled proposition of law that mere recovery of tainted money from the accused is not enough to presume that the money recovered is graft money. The prosecution is bound to prove by substantive evidence regarding the demand and acceptance of money beyond reasonable doubt. Only if the prosecution establish beyond doubt that the money recovered from the accused was received by him, the presumption under Section 20 could be drawn. As per the evidence let in by the prosecution in this case, the above ingredient is fully satisfied. The demand of illegal gratification is spoken by PW.2. The unimpeached testimony of PW.2 proves that the accused demanded Rs.1,500/- for issuing the computation order through which he was entitled to get Rs.1,23,889/-. To ensure the collection, he had retained the pension pass book. On the next day when he met the accused along with PW.3 the accused after ensuring PW.2 has brought money had taken the pension pass book from the steel bureau,

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showed it to PW.2 and PW.3 only after collecting the bribe money, he handed over the pension pass book to him. PW.2 evidence is well corroborated by PW.3. The rebuttal evidence let in by the defence, no way challenges the evidence of PW.2 and PW.3. In the said circumstances, this Court finds no merit in this appeal.

26. Therefore, the Criminal Appeal No.805 of 2011 is dismissed. The judgment and sentence passed by the the learned Special Judge Court for cases under Prevention of Corruption Act, Coimbatore, in Special CC.No.1 of 2011 dated 23.11.2011 is hereby confirmed.

27. While confirming the judgment of the trial Court, this Court is of the view that, considering the present age of the appellant, the sentence may be modified to the effect that the appellant/accused shall undergo rigorous imprisonment for a period of one year for the offence under Section 7 and two years for the offence under Section 13(1)(d) for Prevention of Corruption Act. No alteration in the fine amount. The period of sentence is ordered to run concurrently.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

bsm

To

1. The learned Special Judge [Prevention of Corruption Cases]
   Coimbatore.

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

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

4. The Principal District and Sessions Judge,
   Coimbatore.

5. The Superintendent of Police,
   Coimbatore.

6. The Chief Judicial Magistrate,
   Coimbatore.

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7.The section officer,
  Crl.Section, High Court,
  Madras.

+1cc to Mr.K.S.Karthik Raja, Advocate SR.No.40293

Criminal Appeal No.805 of 2011

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