

Bail Slip

The petitioner/accused viz M.Moidunni @ Moideen S/o.Madharsahib was directed to be released on bail as per order of this Court dated 5/12/2007 and made in Crl.MP.No.1/2007 in Crl.A.1075/2007 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08..11..2016
Judgment Pronounced on : 28..04..2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.1075 of 2007

M.Moidunni @ Moideen

... Appellant / Accused

-Versus-

State Rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
[Crime No.2/2003/AC/CB]
Coimbatore

... Respondent / Complainant

Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 r/w 27 of The Prevention of Corruption Act, 1988 against judgment of conviction and sentence dated 14.11.2007 recorded in Special Case No.6 of 2003 by the learned Special Judge/Chief Judicial Magistrate, Coimbatore.

For Appellant : M/s. Vedavalli Kumar

For Respondent : Mr.P. Govindarajan,
Government Advocate
[Criminal Side]

JUDGMENT

The sole accused in Special Case No.6 of 2003 on the file of the learned Special Judge/Chief Judicial Magistrate, Coimbatore, is the appellant herein. He stood charged for the offences under Sections 7 & 13(2) r/w 13(1)(d) of The Prevention of Corruption Act. When the appellant was questioned as to the charges, he pleaded not guilty and therefore, he was put on trial. The learned Special Judge, after full-fledged trial, found the appellant guilty for the offences under Sections 7 and 13(2) r/w 13(1)(d) of The Prevention of Corruption, 1988. The appellant was accordingly convicted and sentenced to undergo rigorous imprisonment of

One year to each offence and to pay a fine of Rs.1000/-to each offence in default to suffer simple imprisonment each for a period of six months for the offences under Sections 7 & 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988 and ordered the above said sentences shall run concurrently. Challenging the above said judgment of conviction and sentence, the appellant is before this court with this criminal appeal.

2. The case of the prosecution is as follows :

The appellant was working as North Region Gardner and Water Meter Assessor at the relevant point of time in Coimbatore Corporation. The complainant/P.W.2/Sethuraman was residing at Door No.76, Gopalakrishnapuram, Aathipalayam Road, Ganapathi, Coimbatore. P.W.2/Sethuraman was residing in one portion in the above said address and running a mess in another portion. One month prior to 09.01.2003, the appellant came to the residence of P.W.2/Sethuraman and demanded money as bribe. P.W.2/Sethuraman is not willing to give bribe money to the appellant, the appellant states that he would calculate water tax as commercial use from the period of beginning of the mess. Further, the appellant told P.W.2/Sethuraman come to the office with bribe money of Rs.3000/-. Again, on 03.01.2003, appellant came to the residence of P.W.2/Sethuraman, but he is not available. Then, the appellant informed to the wife of P.W.2/Sethuraman, if P.W.2 comes ask him to come and meet me in the Office of the appellant. On 06.01.2003, morning at 8.45 a.m., the complainant met the appellant at his office and explained about his inability to pay the bribe amount and then the appellant after negotiation reduced bribe amount, as Rs.1000/-.

3. On 09.01.2003 at 4.27 p.m., the appellant as a public servant, misused his official capacity, demanded and accepted bribe money of Rs.1000/-as illegal gratification from P.W.2/Sethuraman. Therefore, the appellant had committed an offences under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

4. The complainant was not willing to give illegal gratification, approached the vigilance and anti-corruption cell at Coimbatore on 09.01.2003 and gave a complaint. P.W.8/Inspector of Police, Vigilance and Anti-corruption cell at Coimbatore. The investigating officer who received the complaint/Ex.P.2 and registered the same as FIR/Ex.P.10 in which P.W.2's signature/Ex.P.3 was obtained. The Investigating officer had also sent a representation to depute government officials for the purpose of trap proceedings to be conducted under the provisions of the Prevention of Corruption Act. P.W.3/Pazhanisamy, Manager, Kadhi Craft and another witness Santhanakrishnan have also present. P.W.8/Inspector of Police introduced to witnesses to the defacto complainant and the witnesses were given a copy of the complaint and FIR and

directed to read the contents of the same, on ascertaining the truth in the FIR, P.W.8 made sure that the complainant had brought the demanded amount of Rs.1000/-. P.W.2/defacto complainant produced an amount of Rs.1000/- (Rs.500 x 1 and Rs.100 x 5). P.W.8 received the said currencies and gave it to witness one Santhanakrishnan and directed to count the money and he also counted the currencies. The currency numbers were noted down in Ex.P.4/Mahazar by P.W.8/Investigating Officer.

5. Thereafter, P.W.8/Investigating Officer had conducted the demonstration of phenolphthalein test in the presence of witnesses and also explained about the significance of phenolphthalein test. Then, P.W.8 packed sodium carbonate and phenolphthalein powder and put in separate cover which was sealed. The sodium carbonate packet was labeled as 'b' and sodium carbonate packet was labeled as 'a'.

6. P.W.8 directed the complainant to keep the tainted money on his pocket and asked P.W.2/complainant and P.W.3 to meet the appellant in his office. P.W.8 also instructed to P.W.2/complainant, not to touch the money until the demand was made by the appellant. The entire proceedings were recorded in Ex.P.4/mahazar in which P.W.2, P.W.3, witness Santhanakrishnan and P.W.8/Investigating officer had signed.

7. Then, the complainant, P.W.8 and other witnesses had proceeded to the office of the appellant, the complainant/P.W.2 & P.W.3 had entered into the office of the appellant and investigating officer and other witnesses were waiting outside the Office, the complainant gave a signal on giving the bribe money to the appellant. The complainant/P.W.2 along with P.W.3 met the appellant in his office which was located in the right side building and the appellant was sitting on the face of south. The appellant asked PW1 as to whether he has brought the bribe amount, and in response the complainant took the currency notes of Rs.1000/- which was tainted with phenolphthalein powder and gave it to appellant. In turn, the appellant received the amount in his right hand, counted and kept it with him and the appellant asked the water reading card from P.W.2. Then, on coming out of the office, as advised, the complainant gave a pre-arranged signal by releasing down his shirt hand fold. P.W.8 enquired P.W.2/defacto complainant and P.W.3/official witness, and then P.W.8 along with his team rushed to the office of the appellant and introduced himself. The bribe money of Rs.1000/-was marked as M.O.3. The water reading card for the residence of P.W.2 was marked as Ex.P.5 and water reading card for mess was marked as Ex.P.6. P.W.3 also corroborated the evidence of P.W.2. Then, P.W.8/Investigating officer prepared sodium bicarbonate solution separately in two glasses and directed the appellant to dip his right and left hand fingers on the solutions and on such dipping the solution turned pink in colour. Then the solutions were poured in two bottles were

sealed and labeled as S1 & S2 and the same were marked as M.O.4 & M.O.5. The above said events were noted in Ex.P.7/mahazar in which PW2, PW3 and PW8 have signed. P.W.8/Investigating Officer seized the records, page nos.1 to 51 from the water tax register and the same was marked as Ex.P.8 and also seized a diary in the name of M.Arumugam, No.72 and the same was marked as Ex.P.9. P.W.8 corroborated the evidence of P.W.2 & P.W.3. P.W.8 has registered FIR/Ex.P.10 and prepared Ex.P.11/rough sketch.

8. P.W.9/Navaneethakrishnan/Inspector of Police took up this case for further investigation. He examined P.W.2 & P.W.3 and recorded their statements and also examined P.W.1's wife Kamalam, Santhanakrishnan, Jeyanraj, Muralidaran, Prakash, Gopalakrishnan and recorded their statements. On 27.01.2003, P.W.9 examined P.W.10/chemical examiner and recorded her statement. Then P.W.9/Inspector of Police obtained Sanction Order/Ex.P.1 from P.W.1 to prosecute the appellant. P.W.1/Karthikeyan, Commissioner of Municipal Corporation, Coimbatore, after perusing the documents placed before him, accorded Ex.P.1/Sanction Order for prosecuting the appellant. P.W.9/Inspector of Police has seized Ex.P.12/office attendance register belonging to the office of appellant. P.W.9/Inspector of Police sent a requisition letter/Ex.P.13 for chemical examination. Ex.P.15/copy of Court letter which was sent for chemical examination. Ex.P.14/chemical analysis report of P.W.10. During chemical examination, P.W.10 found that M.O.4 and M.O.5 solutions were contained the chemical element of phenolphthalein and sodium carbonate and also found that M.O.1 contained phenolphthalein and M.O.2 contained Sodium carbonate. On completion of investigation, P.W.9/Inspector of Police filed charge sheet against the appellant for the offences under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

9. The learned Special Judge/Chief Judicial Magistrate, Coimbatore, after completing the prosecution evidences, the incriminating evidence was put to the appellant under Section 313(1)(b) of Cr.P.C. The appellant denied the same as false evidence and filed statement in writing. On the side of appellant, D.W.1 to D.W.6 were examined and Ex.D.1 was marked. After considering the oral and documentary evidence, the trial Court found that the appellant was guilty and convicted him for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced him as stated above. Aggrieved against the order of conviction and sentence passed by the trial Court, the appellant has preferred the present appeal.

10. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal side) appearing for the respondent and also perused the available records.

11. The learned counsel for the appellant submitted that the Court below has presumed that the money was received towards illegal gratification without any legal hindrance. The learned counsel would also submit that PW1 was not the sanctioning authority and therefore the sanction is said to be illegal and the entire proceedings is vitiated. The learned counsel elaborately relied on various evidences of the prosecution witnesses and pointed out the discrepancies and the contradictions in proving the case of the prosecution. The learned counsel would further submit that the Investigating Officer was not competent person to investigate the offence and the officer in the cadre of Deputy Superintendent of Police has to investigate the offences under Prevention of Corruption Act.

12. On the contrary, the learned Government Advocate (Crl. side) would contend that the Inspector of police, Vigilance and Anti corruption cell are authorised to investigate on the directions of the Deputy Superintendent of Police under Section 17 of the Act. The learned counsel also submit the validity of the sanction cannot be questioned, as PW1 was the appointing authority and there are strong evidences against the appellant to prove the case of the prosecution.

13. At the outset, it is not necessary to reanalyse the sanction granted by PW1 as the trial Court has already dealt with the matter on the basis of well laid down principles. In Paragraph 36 of the trial court judgment, the trial judge has elaborately discussed the provisions under Section 17(c) of the Act and had concluded the Inspector of police is authorized to conduct an investigation and it would not be vitiated for non compliance of the provision under Section 17 (c) of the Act.

सत्यमेव जयते

14. As per the evidence of PW2, one month prior to 09.01.2003, the appellant came to the residence of P.W.2/Sethuraman and demanded money as bribe. P.W.2/Sethuraman is not willing to give bribe money to the appellant, the appellant states that he would calculate water tax as commercial use from the beginning of the mess. Further, the appellant told P.W.2/Sethuraman to come to his office with bribe money of Rs.3000/-. Earlier, on 03.01.2003, the appellant came to the residence of P.W.2/Sethuraman, but he was not available. Then, the appellant informed the wife of P.W.2/Sethuraman, if P.W.2 comes ask him to come and meet me in the office of the appellant. On 06.01.2003, morning at 8.45 a.m., the complainant met the appellant at his office and explained about his inability to pay the bribe amount and then the appellant after negotiation reduced bribe amount, as Rs.1000/-. On 09.01.2003 at 4.27 p.m., the appellant being a

public servant, misused his official capacity, demanded and accepted bribe money of Rs.1000/-as illegal gratification from P.W.2/Sethuraman. The evidence of PW2 was corroborated by P.W.3. From the evidences of P.W.2 & P.W.3, the demand and acceptance has been proved. P.W.8/Investigating Officer/Trap Laying Officer conducted search in the presence of witnesses proved that recovery and conducted phenolphthalein test in the hands of appellant and also the evidence of P.W.10/Chemical Examiner and Ex.P.14 report of P.W.10 found that M.P.4 & M.O.5 solutions were contained the chemical element of phenolphthalein and Sodium carbonate.

15. Though the learned counsel for the appellant would submit that the wife of P.W.2 has not been examined. It is not the case of the prosecution that the appellant has made any demand with the wife of the P.W.2/defacto complainant. The specific case of the prosecution is that the appellant has made demand only from P.W.2/Defacto complainant. The appellant made demand from P.W.2 and accepted bribe money from P.W.2. The non-examination of the wife of the defacto complainant does not fatal to the prosecution case. In this case, demand, acceptance and recovery have been clearly proved by the prosecution by way of oral, documentary evidences and material objects.

16. For all the reasons stated above, it could be concluded that the prosecution have established the case beyond all reasonable doubts by placing reliable and acceptable evidence.

17. Since the trial Court has considered the entire oral and documentary evidence and come to the conclusion that the accused has committed the offence as stated above, there is no reason to interfere with the conviction and sentence imposed by the trial Court.

18. In the result, this appeal stands dismissed. The conviction and sentence imposed on the appellant by the trial Court are hereby confirmed. The trial court is directed to take necessary steps to secure the presence of the accused for undergoing the remaining period of sentence. The period of sentence already undergone by him shall be given set-off under Section 428 IPC.

Sd/-

Assistant Registrar(CS VIII)

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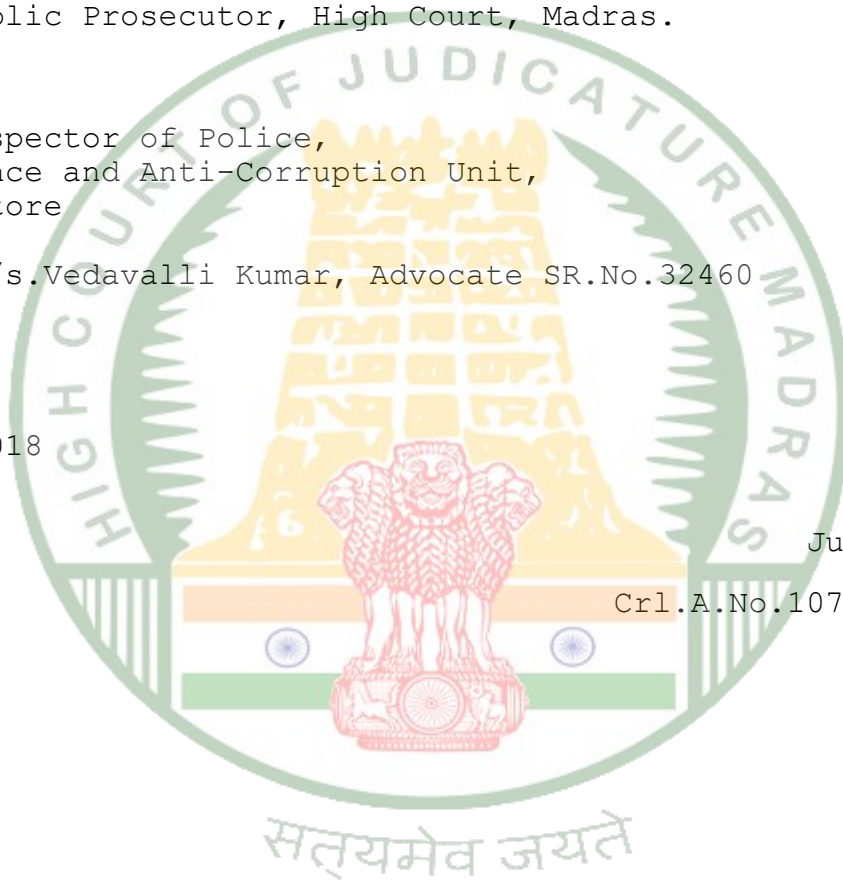
Ksa/tsh

To

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

+2cc to M/s.Vedavalli Kumar, Advocate SR.No.32460

NRL (CO)
sm:16.5.2018



Judgment in
Crl.A.No.1075 of 2007

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