BAIL SLIP

The appellants herein Viz; K.Munirathinam, S/o.A.Koolan, in Crl.A.No.153 of 2009 and A.Sekar S/o.M.Arunachalam, in Crl.A.NO.221 of 2009 were directed to be released on bail as per order of this court dated 02.04.2009, made in Crl.MP.No.1 of 2009 in Crl.A.No.153 of 2009 and dated 06.05.2009, made in Crl.MP.No.1 of 2009 in Crl.A.No.221 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2018

PRONOUNCED ON : 22.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.153 & 221 of 2009

K.Munirathinam .. Appellant in Crl.A.No.153 of 2009/ Accused No.1

A.Sekar ..Appellant in Crl.A.No.221 of 2009/ Accused No 2

/versus/

State represented by
Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti Corruption Branch,
III Floor, Shastribhavan,
Haddows Road, Nungambakkam,
Chennai 600 006.
R.C.No.28(A)/2003 ..Respondent in Crl.A.No.153 of 2009/ Complainant

State by:
Inspector of Police,
SPE/CBI/ACB
Chennai
(Crime No.RC.28(A)03) .. Respondent in Crl.A.No.221 of 2009/ Complainant

Prayer in Crl.A.No.153 of 2009: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure 1973 and under Section 27 of the Prevention of Corruption Act, 1988 against the judgment of conviction and sentence passed by the learned Additional Special Judge for CBI Cases, Chennai 600 104, dated

20.03.2009 in C.C.No.32 of 2005 under section 120B IPC r/w 7 and 13(2) r/w 13(1)(d) of the prevention of Corruption Act.

Prayer in Crl.A.No.221 of 2009: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure 1973 against the judgment passed by the court of Additional Special Judge for CBI Cases at Chennai in C.C.No.32 of 2005 dated 20.03.2009 convicting the appellant under Section 120-BIPC r/w u/s 7 of Prevention of Corruption Act and sentencing him to undergo imprisonment for a period of one year and imposed a fine of Rs.20,000/- and in default of payment of fine to undergo imprisonment for a period of 4 months.

For Appellant :Mr.B.Kumar, Sr.C.for Mr.Shruthan (Crl.A.No.153/2009)

Mr.R.Rajasekaran (Crl.A.No.221/2009)

For Respondent :Mr.K.Srinivasan, Spl.PP(CBI) (in both cases)

COMMON JUDGMENT

The appellants herein are the accused in C.C.No.32 of 2005 on the file of Additional Special Judge for CBI cases at Chennai. The trial Court has found A-1[K.Munirathinam] guilty of offences under Sections 120 B IPC r/w 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to undergo imprisonment for a period of 2 years and imposed fine of Rs 30,000/- in default to undergo imprisonment for a period of 6 months and found A-2[A.Sekar] guilty of offences under Sections 120B IPC r/w Section 7 of Prevention of Corruption Act, 1988 and sentenced to undergo imprisonment for a period of one year and imposed fine of Rs.20,000/- in default, to undergo imprisonment for a period of 6 months.

2. Brief facts leading to the appeal:

Thiru.K.Munirathinam (A-1) the appellant in Crl.A.No.153 of 2009 was working as Sub-Divisional Officer (Telegraphs), BSNL, Thiruvannamalai during the period between 28/10/1998 and 15/07/2003. Thiru.A.Sekar(A-2) was working as Telephone Supervisor, BSNL, Tiruvannamalai from December 1999 till 15/07/2003. On 26.06.2003 when A-1[Thiru.K.Munirathinam] was at his office, he demanded Rs.1,000/- from one N.Dhamodaran as reward or motive for issuing demand note for providing STD booth to him at Kannapandal Village, Thiruvannamalai.

3. Thiru.N.Dhamodaran was not willing to pay bribe to STD booth, so contacted CBI office at Chennai over phone. As per the instruction, he got from the CBI office, Thiru.N.Dhamodaran met Thiru.Balasubramaniam[PW-7], Inspector of CBI on 27/06/2003 at Thiruvannamalai Railway Station retiring room. As per instruction of Thiru.Balasubramaniam, trap was laid. Thiru.Dhamodaran[PW-4] went to the SDO office along with the decoy witness Mr.R.Krishnamoorthy[PW-3]. He met A-1 [Thiru.K.Munirathinam] at 9.25 am. When A-1 [Thiru.K.Munirathinam] demanded Rs.1,000/-, Thiru.N.Dhamodaran gave the tainted money to him. After accepting the money, A-1 [Thiru.K.Munirathinam] returned back to Thiru.N.Dhamodaran with an advise to hand over the bribe money to A-2[Thiru.A.Sekar], who in pursuance to the criminal conspiracy demanded and accepted the bribe money of Rs.1,000/- from Thiru.N.Dhamodaran and kept it in his pocket.

4. The trap team, after receipt of the pre-arranged signal from Thiru.N.Dhamodaran, went in the SDO office, got themselves introduced to A-2[Thiru.A.Sekar] and enquired him, whether he has received any bribe from Thiru.N.Dhamodaran, when he unanswered in affirmative, the hands of A-2 [Thiru.A.Sekar] was tested for presence of phenolphthalein and the solution were collected in separate bottles and labelled. Then, the tainted money was recovered from A-2[Thiru.A.Sekar] and the same was kept in his pant pocket. The currency numbers found tally with the numbers mentioned in the entrustment mahazar. Thereafter, A-2[Thiru.A.Sekar] was given a lungi and asked to change the lungi and hand over the pant. The pant left side pocket was tested for phenolphthalein and the solution was collected in a bottle, sealed and labelled. Based on the information given by the complainant [Thiru.N.Dhamodaran] and A-2 [Thiru.A.Sekar], the trap team interrogated with A-1 [Thiru.K.Munirathinam] who admitted the receipt of the money and gave back to Thiru.N.Dhamodaran to hand over the same to A-2 [Thiru.A.Sekar].

5. Since the prosecution had satisfied from the complaint of Thiru.N.Dhamodaran and through the witnesses examined by them, that A-1[Thiru.K.Munirathinam] and A-2[Thiru.A.Sekar] had conspired to obtain pecuniary advantage by abusing their official position, and in pursuance of the said conspiracy, demanded and accepted Rs.1,000/- as reward or motive to prepare demand note in favour of Thiru.N.Dhamodaran to get STD booth, the prosecution laid down the final report.

6. The trial Court, after considering the material records placed before it, framed charges under Section 120-B IPC,

Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 8 witnesses, marked 19 exhibits and 7 material objects. On the side of the defence, one witness was examined 9 exhibits were marked. The trial Court accepting the case of the prosecution, held them guilty and sentenced the accused as stated above. The said judgment is under challenge before this Court by way of appeals.

7. Contentions of the appellants:

The prosecution has examined the defacto complainant Thiru.N.Dhamodaran as PW-4. He did not support the case of the prosecution, therefore, he was treated as hostile witness by the prosecution. The trial Court despite that, has relied upon the evidence of PW-4[Thiru.N.Dhamodaran] who is a tainted witness and unreliable witness. In the absence of strong corroboration to the evidence of PW-4[Thiru.N.Dhamodaran], the trial Court ought not to have convicted the appellants. Even according to the complaint Ex.P-16, A-2 [Thiru.A.Sekar] never demanded any money much less bribe money. While so, the question of conspiracy between A-1 and A-2 does not arise. Without material to prove meeting of mind, the charge of conspiracy is not made out. When the ingredient of conspiracy does not exist, the conviction can not sustain in the absence of finding regarding substantive offences like Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

8. The explanation given by the accused about the circumstances under which the tainted money was recovered had not at all been considered by the trial Court. The defacto complainant did not provide necessary documents along with his application for STD booth. When he was asked to bring the documents relating to the premises in which he is supposed to put up the STD booth, he went back to bring those documents. Under the pretest of handing over the documents, he gave a plastic cover to A-1[Thiru.K.Munirathinam], who after receiving it, directed to hand over the same to A-2[Thiru.A.Sekar].

9. The motive to give false complaint is proved through DW-1 [Thiru.M.Jegannathan], who has deposed that, due to unrest in the village because of the misconduct of one Dharmagunam, Telephone Mechanic, complaint was given by the BSNL authorities to provide police protection to the office and staff. Later, after enquiry, they found if Thiru.Dharmagunam is transferred elsewhere, the law and order in the village will come to normalcy. The first accused as SDO took action against Thiru.Dharmagunam for transfer from Alangananthal Telephone

exchange. Through the trade union Thiru.Dharmagunam prevented the transfer order being issued. Infuriated by the attempt made by A-1[Thiru.K.Munirathinam], he has instigated PW-4 [Thiru.N.Dhamodaran] to lodge a false complaint of bribe demand and acceptance.

10. Contentions of the respondent:

Per contra, the Learned Special Public Prosecutor(CBI Cases) appearing for the respondent would submit that, the demand and acceptance is well proved through the evidence of defacto complainant [PW-4] and the accompanying witness PW-3. The recovery of the tainted money is established through mahazar Ex.P-6 and the occular evidence of PW-3[Thiru.R.Krishnamurthy] and PW-7[Thiru.S.Balasubramaniam]. The scientific expert evidence and his opinion prove the receipt of tainted money by A-1[Thiru.K.Munirathinam] as well as A-2[Thiru.A.Sekar]. The recovery of tainted money is not disputed by the accused/appellant. Their only defence is that, the money smeared with phenolphthalein was entrusted to them in a cover under the pretest of house document of the defacto complainant. They were made to handle the cover which has been smeared with phenolphthalein power. This reason for the presence of phenolphthalein in A-1[Thiru.K.Munirathinam] hands and A-2 [Thiru.A.SEkar] hands and pocket is not at all believable. The trial Court has rightly negatived the explanation given by the defence for possessing the tainted money. The motive theory propounded by the accused persons in not at all believable by any prudent person, since the alleged episode of Dharmagunam admittedly happened two year before the trap. Therefore, pleaded that the appeals deserve no merit for consideration and the appeals have to be dismissed outright.

11. Point of consideration:

Whether the trial Court failed to consider the defence explanation in proper perspective?

12. The specific charge against the appellants is that they conspired to demand illegal gratification for Dhamodaran (PW-4) as reward or motive to prepare demand note in favour of PW-4. The complaint Ex.P-16 does not whisper about A-2[Thiru.A.Sekar] or any other person to presume meeting of mind between A-1 [Thiru.K.Munirathinam] and any other person. The only piece of evidence against A-1 is the unreliable, inconsistent and tainted evidence of PW-4[Thiru.N.Dhamodaran] whom the prosecution itself has declared hostile. Except PW-4 none of the prosecution witness speaks about the demand of bribe by A-1 on 26.06.2003. Again on 27.06. 2003, neither PW-4[Thiru.N.Dhamodaran] nor PW-3

[Thiru.R.Krishnamurthy] who was sent by the trap laying officer to witness the transaction has spoken about demand of bribe by A-1[Thiru.K.Munirathinam]. Neither the money was recovered from A-1.

13. Likewise, the receipt of the tainted money by A-2 as illegal gratification is also highly doubtful because, neither PW-3[Thiru.R.Krishnamurthy] nor PW-4[Thiru.N.Dhamodaran] had deposed that A-2[Thiru.A.Sekar] demanded money from PW-4 [Thiru.N.Dhamodaran]. In fact, both the prosecution witnesses would only say that, PW-4[Thiru.N.Dhamodaran] came out from A-1 [Thiru.K.Munirathinam] room and enquired who is Sekar. On Sekar being identified by his colleagues, PW-4[Thiru.N.Dhamodaran] has given the money to A-2[Thiru.A.Sekar], saying A-1 [Thiru.K.Munirathinam] has asked to give it to him. Mere entrusting money on some pretest will not be sufficient to presume that the money was received as illegal gratification. The prosecution has to prove that the demand of illegal gratification beyond reasonable doubt.

14. In this case, the case of the appellants is that, PW-4 [Thiru.N.Dhamodaran] has not submitted his application for STD booth with necessary documents. His application marked as Ex.P-2 and other documents like mark certificate, Transfer certificate, non-employment certificate recovered during the search conducted immediately after the trap would reveal that PW-4 [Thiru.N.Dhamodaran] along with his application has not enclosed document to show whether the premises where he proposed to install the STD booth is owned by him or he has rented the premises. PW-4[Thiru.N.Dhamodaran] admits in his deposition, that he did not specify the address at which he want to locate his STD booth and he has not enclosed documents regard the premises. PW-2 [Thiru.M.Govindaraju] Divisional Engineer (Maintenance) BSNL admits that before preparation of demand note, the SDO has to verify the rental agreement or ownership authentication.

15. The Court below has not only failed to appreciate and consider the above said vital fact spoken by the witnesses for prosecution but has erroneously observed that, once provisional sanction given, then the installation does not require any document to be produced, but only the procedural formalities of installation to be carried out by the concerned persons. What the trial Court has observed is contrary to the evidence available on record.

16. Strangely, in this case, though charge of conspiracy is framed and conviction is for conspiracy, the prosecution has not come out with evidence to substantiate this charge. Section 120-A IPC defines what is criminal conspiracy and Section 120-B IPC provides punishment for criminal conspiracy. The ingredients to make an act designate criminal conspiracy, two or more persons must agree to do or cause to be done, an illegal act or legal act by illegal means. Proviso to Section 120 A IPC clarifies, no agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

17. Privacy and secrecy are characteristics of conspiracy. Mostly conspiracies are hatched in secrecy, so, no direct evidence will be available. Through circumstantial evidence, the same may be proved. However, agreement between two or more persons is the first and foremost ingredient required to consider whether the act done or cause to be done fall within the meaning of criminal conspiracy. There is not an iota of evidence either direct or circumstantial to infer that A-1 [Thiru.K.Munirathinam] as SDO and A-2[Thiru.A.Sekar] as Telephone Supervisor ever agreed to do an illegal act namely, to take illegal gratification other than legal remuneration in respect of an official act for PW-4.

18. To accept the prosecution case, there must be some evidence to show that, prior to the receipt of money from PW-4 [Thiru.N.Dhamodaran],A-1[Thiru.K.Munirathinam] and A-2 [Thiru.A.Sekar] had meeting of mind and pursuance to that, A-1 [Thiru.K.Munirathinam] received the money and gave back to PW-4 [Thiru.N.Dhamodaran], to give it to A-2[Thiru.A.Sekar]. Whereas, the case of the prosecution is that on complaint from PW-4 [Thiru.N.Dhamodaran] alleging that A-1 [Thiru.K.Munirathinam] demands bribe of Rs.1,000/- to prepare demand note to install STD booth, they have laid trap. The tainted money has been recovered from A-2[Thiru.A.Sekar] and phenolphthalein test conducted on the hands of A-1[Thiru.K.Munirathinam] proved to be positive, indicating A-1 [Thiru.K.Munirathinam] had handled the tainted money. Neither PW-4 [Thiru.N.Dhamodaran] who gave the tainted money to A-2[Thiru.A.Sekar] nor PW-3 [Thiru.R.Krishnamurthy] the decoy witness, who was sent to oversee the transaction have deposed before the Court that, the money was given to A-2[Thiru.A.Sekar] on his demand or he received it knowing that it is an illegal gratification for A-1 [Thiru.K.Munirathinam].

19. The defacto complainant, in fact, has not even deposed that, when he met A-1[Thiru.K.Munirathinam] on 27.06.2003 he demanded bribe. He has only said that, he went to the room of A-1[Thriu.K.Munirathinam] and handed over the money to A-1 [Thiru.K.Munirathinam], he received it, counted and instructed him to give it to A-2 [Thiru.A.Sekar]. He came out found who is Sekar and gave the money to him.

20. Therefore, in the absence of satisfactory evidence to infer conspiracy between A-1[Thiru.K.Munirathinam] and A-2 [Thiru.A.Sekar], when the defacto complaint is not consistent to the prosecution case and declared hostile and the defence theory that under the guise of handing over title document, PW-4 [Thiru.N.Dhamodaran] gave a cover presumable smeared with phenolphthalein and the same was received by A-1 [Thiru.K.Munirathinam] and requested PW-4 [Thiru.N.Dhamodaran]to give it to A-2[Thiru.A.Sekar] for processing, appears to be more plausible and probable explanation for the presence of phenolphthalein. The episode of one Dharmagunam, Telephone Mechanic being the alleged motive for such a false accusation, also could not be thrown as invented or imaginary since the records produced by DW-1 and the facts elucidated from other witnesses proves that, some time prior to trap, A-1 [Thiru.K.Munirathinam] has tried to transfer Dharmagunam, Telephone Mechanic for his misbehaviour with public, causing unrest in the village, where the telephone office located.

21. In the light of the above facts and circumstances, this Court holds that, the trial Court has erroneously held the accused guilty of charges without proper appreciation of evidence and application of law. Therefore, these Criminal Appeals are allowed. The judgment of conviction and sentence passed by the learned Additional Special Judge for CBI Cases, Chennai 600 104, dated 20.03.2009 in C.C.No.32 of 2005 is hereby set aside. Fine amount paid, if any, shall be refunded to the appellants. Bail bond if any executed by the appellants shall be cancelled. The appellants are at liberty, unless their presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To
1.The Additional Special judge for CBI Cases, Chennai.

2.The Inspector of Police, Special Police Establishment, Central Bureau of Investigation, Anti Corruption Branch, III Floor, Shastribhavan,
Haddows Road, Nungambakkam, Chennai 600 006.

3.Inspector of Police, SPE/CBI/ACB,Chennai.

4.The Special Public Prosecutor(CBI Cases), High Court, Madras.

copy to

The Sectioin officer
Crl.Section High Court, Madras

+1 cc to M/s.B.Shruthan Advocate sr 13703
+3 cc to M/s.R.Rajasekaran Advocate sr 13744 dt 08/03/2018
+1 cc to M/s.K.Srinivasan, Special Public Prosecutor
(CBI) High Court, Madras

mr(co)
aa05/03/2018

common judgment made in
Crl.A.Nos.153 and 221 of 2009