

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.12.2017	Pronounced on: 23.01.2018
--------------------------------	----------------------------------

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos. 158 & 165 of 2009

- | | |
|----------------------|---------------------------------------|
| 1. A.Ramasamy | ... Appellant in Crl.A.No.158 of 2009 |
| 2. P.Senthil Kumaran | ... Appellant in Crl.A.No.165 of 2009 |

/versus/

State, rep. by The
Deputy Superintendent of Police,
Prevention of Corruption and Vigilance Department,
Salem.

... Respondent
in both the appeals

PRAYER in Crl.A.Nos. 158 & 165 of 2009: Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, to set-aside the judgment of conviction and sentence of the learned Special Judge cum chief Judicial Magistrate, Salem in Special C.C.No.61/2005 dated 18.02.2009.

For Appellant : Mr. S.Raveekumar
in Crl.A.No.158 of 2009

For Appellant : Mr. S.Shivakumaran
in Crl.A.No.165 of 2009

For Respondents : Mr. P.Govindarajan,
in both appeals Additional Public Prosecutor
(Criminal Side)

COMMON JUDGMENT

These two appeals are directed against the judgment of conviction and sentence passed in Special C.C.No.61 of 2005 (on the file of the Special Court-cum-Chief Judicial Magistrate, Salem), dated 18.02.2009.

2. The appellants are Junior Assistant and Administrative Officer respectively working in Govt. Medical College, Salem. The Trial Court has found them guilty for receiving Rs.3000/- as illegal gratification for issuing fitness certificates to 30 Grade-II Police Constables, who were subjected to medical examination prior to their appointment.

3. The case of the prosecution in brief:

Pursuant to the recruitment process of Grade-II Police Constable (men) held at Salem District, 143 candidates were provisionally selected and they were subjected to medical examination to know their physical fitness. The Superintendent of Police, Salem addressed a letter to the Dean of Mohan Kumaramagalam Government Medical Hospital, Salem, vide his letter dated 28.05.2003 enclosing list of candidates provisionally selected for Grade-II Police Constable post and requested medical test to be conducted on them by constituting a Medical Board. In response to the said request, the Dean of Government Medical College, Salem had constituted a four member Medical Board and intimated the same to the Superintendent of Police that the proposed dates for medical examination is fixed from 01.09.2003 to 05.09.2003. When the provisionally selected Police Constables, Grade-II came for medical examination, it is alleged that Senthil Kumar (A1), Junior Assistant and Ramasamy, (A2) Administrative Office of the Government Medical College Hospital demanded Rs.100/- for each candidate as illegal gratification to expedite the process and

issue medical certificate. Tr.Sivasamy, Inspector of Police, District Special Branch, Salem had reported to his superior officer namely, Superintendent of Police, who in turn has instructed him to give complaint to Vigilance and Anti-Corruption Detachment.

4. Based on the written complaint of Sivasamy, First Information Report has been registered in Crime.No.10/AC/2003 by the Vigilance and Anti Corruption, Salem, against the appellants and the trap was organized. On 02.09.2003 at about 3.35pm the first accused Senthil Kumar at the instigation of second accused[Ramasamy] had demanded and received Rs.3,000/- from Sivasamy, Inspector of Police. The Trap Laying Officer had recovered the tainted money of Rs.3,000/- from A1. In the course of investigation, A2 was called to the trap spot. A sum of Rs.22,240/- was recovered from the steel bureau kept by A2 in 8 different covers written as Medical Board and date.

5. Based on the final report, the trial court had framed charge under Section 7 and 13(1)(d) of the Prevention of Corruption Act against the accused. To prove the charges, the prosecution has examined 47 witnesses. Marked 36 Exhibits and 8 material objects through them. In defence, the accused have marked 39 Exhibits. The Trial Court has held both the accused guilty of offence under section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act and had imposed one year Rigorous imprisonment and a fine of Rs.1000/-, in default to undergo 2 months R.I for offence under Section 7 of PC Act. One year Rigorous

imprisonment and fine of Rs.1000/-, in default to undergo 2 months Rigorous imprisonment for offence under Section 13 (1) (d) r/w 13(2) Prevention of Corruption Act. The period of sentence ordered to run concurrently and period of imprisonment already undergone was set off against substantial period of sentence.

6. The MO-1 series ordered to be returned to PW.9 to PW.37 and PW.40 the candidates attended the Medical Board on 02.09.2003. Rs.22,240/-(M.O.8) directed to be deposited in a Nationalized Bank and later to be confiscated to the state.

7. Aggrieved by the above judgment of sentence and conviction, the appellants have preferred appeals on the ground that the judgment of conviction passed by the Trial Court is unsustainable in law. The prosecution case of demand of illegal gratification by the Junior Assistant and Administrative Officer working in medical college is totally unfound. It is concerted and fabricated case by the Police department against the innocent Government staff who insisted strict compliance of Rule.

8. The medical code directs the hospital authority to collect fees for medical examination and issuance of fitness certificate. While so, the demand of Rs.100/- per person for fitness certificate is legally permissible and by no stretch of imagination, it could be treated as illegal gratification. The fact that

Rs.22,240/- in 8 different covers mentioning the date of Medical board and kept in almirah speaks for itself that the money is collected as per law and kept in Office steel bureau for remittance into the treasury. This explanation given by the accused persons as well as the Dean of the hospital, who is the Administrative Head of the hospital has not been noted by the prosecution as well as the Trial court.

9. The Superintendent of Police, Salem who had personal grudge over the hospital staff, had fabricated the case to satisfy his ego. He had abused his position and authority by foisting a false case against the appellants as if the money demanded is an illegal gratification, while the fact remains, it was legal remuneration which the members of the Medical Board are entitled. In the course of excessive exercises of power, he has seized the Government money kept in the almirah to show as if hospital authorities are collecting money other than legal remuneration. The court below had failed to note that if the appellants really obtained illegal gratification for themselves or for others, there is no necessity for them to keep it in the almirah with labeling the covers indicating the date of medical board and the amount. Even this rudimentary and basic admitted facts of the prosecution has not been given due consideration by the Trial Court which has led to grave miscarriage of justice.

10. The Superintendent of Police who had addressed the dean to conduct medical board ought to have contacted him to get clarified whether the demand

of Rs.100/- per candidates for issuance of Medical certificate is permissible or not. Instead, he has arbitrarily instructed his subordinates to lodge a complaint before Vigilance and Anti Corruption Police, Salem. Misusing his power and authority, he had foisted false case against them and created indelible blemish in the career of two innocent government staff.

11. During the previous selection process, Government has issued specific Government Order exempting the provisionally selected Police constables, Grade-II(women) and warden (Prison Department) from paying fees for medical examination. There is no such exemption granted during the selection held in the year 2003. Therefore, fees for constituting medical board and for issuance of fitness certificate was rightly demanded from the candidates. The investigating officer with ulterior motive had not produced all the documents recovered during the search and seizure proceedings held on 02.09.2003. The receipt books maintained by the hospital authority will reveal that fees for certificate had been regularly collected and remitted into the treasury account as per the prevailing Rules. The defence Ex.D.1 to Ex.D.39 which speaks volume about the procedure followed during the examination of the candidates when medical board is specially constituted. The communications between the dean and the department were not properly appreciated by the Trial Court. The Trial Court has not taken serious note of the failure on the part of the prosecution to produce all the 9 covers recovered during the search proceedings. Only 8 covers were produced by the prosecution whereas 9 covers were recovered during the search

proceedings as deposed by PW.3. The prosecution had not examined the doctors who were members of the Medical Board.

12. The learned counsels for the appellants submitted that the lacuna in the prosecution case which has been launched with ulterior motive has not been properly considered by the Trial Court. Hence judgment of the trial court is liable to be set aside.

13. The learned Additional Public Prosecutor appearing for the respondent would submit that Medical Code Rule 504 r/w 494 relates to collection of fees for issuance of fitness certificate to the candidates entering in to Government service does not apply to Police Constables. PW.1, Secretary to the Government of Health and Family Welfare in her deposition has said that no fees should be collected from the selected Police Constables and demand of Rs.100/- from them for medical examination is contrary to law. Ex.P.1 issued by PW.1 and Ex.P.25 issued by P.8 are the order sanctioning to prosecute A1 and A2 respectively. They both have deposed that collection of Rs.3000/- is an illegal gratification in violation of para-504 of Medical Code Volume-I.

14. Further, the learned Additional Public Prosecutor appearing for the respondent would contended that PW.42, Dr.Subramaniam, Joint Director, Health and Family Welfare, Dhamapurai, PW.43 K.Arunagiri Joint Director of Health service, Namakkal District, PW.44 Karunanithi, Additional Secretary to

Government, Joint Director of Medical Examination and PW.5 Dr.G.Venkatachalam, Joint Director of Medical and Public Health Erode has deposed that during the relevant period in their respective districts they did not collect any fees from the selected Police Constables Grade-II for medical examination. Therefore, relying upon these witnesses and interpreting Medical code para-504, the learned Additional Public Prosecutor would submitted that the collection of Rs.3,000/- is nothing but illegal gratification and it is not a legal remuneration as contended by the appellants.

15. Points for consideration:

Whether the receipt of Rs.3,000/- from the 30 Police Constables for issuance of Fitness certificate is a legal remuneration or illegal gratification?

16. The admitted facts by the prosecution as well as the defence is that during the month of August 2003 selection for Police Constable Grade-II (men), Salem District had been conducted and the District Superintendent of Police, Salem had written letter to the Dean Government Mohan Kumaramagalam Medical College Hospital to constitute a Medical Board and examine the candidates whose names found in the list annexed to the letter and issue fitness certificate for them if they found fit. This letter is marked as Ex.D.6. In this letter, the Superintendent of Police has mentioned about the memo of Director General of Police, Chennai directing that no candidate should be harassed and

medical certificate to be given correctly without room for malpractice. Medical examination should be done expeditiously without giving room for corruption or complaint.

17. In response to the letter Ex.D.6 dated 02.03.2003, the dean of the college who is examined as PW.7 had constituted board of four members and fixed the day of medical examination from 01.09.2003 to 05.09.2003. PW.2 the defacto complainant had deposed that on the 2nd day of medical board, there was demand of illegal gratification by A1 and A2 so he reported the matter to Superintendent of Police who in turn directed him to lodge a complaint before the Vigilance and Anti Corruption Cell. As per his instruction, PW.2 had gone to Vigilance and Anti Corruption Police and lodged the complaint. Immediately, the respondent police has prepared pre-trap proceedings and gone to the hospital. By that time, the medical examination for all the 30 candidates had been completed. PW.2 in the presence of PW.3 had given Rs.3000/- to A1. Thereafter, PW.46 Giri Murugan, District Superintendent of Police had apprehended A1 and recovery tainted money from A1 which was kept in his left side pant pocket. Thereafter, A2 who was on other duty in the college, was called to the hospital. During the interrogation, Rs.22,240/- recovered from steel bureau which was kept in 8 different covers with marking medical board, date and amount.

18. The disputed fact in this entire case is not the receipt of Rs.3,000/-

but whether the said receipt is an illegal gratification or legal remuneration as prescribed under Code. Therefore, it is suffice to analyze the relevant Exhibits which are relied by the prosecution and the defence. Ex.P.2 is the Tamil Nadu Medical Code, Volume-I extract which is marked through PW.1 who has accorded sanction to prosecute A1. The 504 of the Code reads as under:

504. Levy of fees for the medical examination of candidates as to their physical fitness-

Candidates for employment under the Central Government and local bodies or servants of such local bodies candidates for Tamil Nadu Government service selected by the Tamil Nadu Public Service Commission and candidates selected by the heads of offices or heads of department should pay the prescribed fee to Government Medical Officers for the grant of certificates of physical fitness.

Provided that candidates for appointment to the inferior service, to the posts of Last Grade Government Servants in work-charged establishments, posts of constables in the police force and posts in warder establishments in the Jail Department and generally to posts the maximum of the scale of pay of which does not exceed Rs.210 shall not be required to pay fees for the grant of certificates of physical fitness by Government Medical Officers.

19. Relying upon the exemption granted to the Police constable in the police force, the prosecution submit that no fees could be collected from the candidates selected for the post of Police Constables. Whereas, Ex.P.18 and Ex.P.19 are copies of Government Order issued prescribing the rate of fees for the medical board. PW.7 [Dr.Jayapal] Dean of Salem Medical College who is the Administrative Head of the hospital to whom the Superintendent of Police has addressed to constitute the medical board in his deposition had categorically stated that the dean is the authority to constitute medical board and as per the

request of Mr.Ponmanikavel, Superintendent of Police, Salem, he constituted medical board for examining Grade-II Police Constables from 01.09.2003 to 05.09.2003. The order passed by him is Ex.P.5. A1 [Senthil Kumar] was allotted the charge for organising medical board vide his order Ex.P.16 and A2 was deputed to take Additional charge of Administrative Officer, Medical College vide order dated 01.07.2003, which is marked as Ex.P.17. Ex.P.15 is letter of PW.7 addressed the Director of Medical College drawing her attention regarding the trap episode conducted at the instance of Superintendent of Police, Salem. In this letter he has brought to the notice that

(i) There is no provisions in the statutory rules granting exemption from the payment of Medical fees, for the Medical Examination of candidates selected for Police Constables.

(ii) No orders of the Government were issued or communicated to this Office, to the above effect, in respect of the (61+143=204) candidates, selected in the current batch(2003) and referred for Medical Examination, to this Hospital.

(iii). No requests were also made by the Police Authorities, based on any Government instructions to conduct Medical Examinations of the candidates selected for Police Constables, by the Medical Board, free of Cost.

20. In this letter PW-7 has indicated that the Grade-II Police constables, who were provisionally selected are neither Government servant nor appointed as Police Constable. Therefore, they are liable to pay fees for medical examination as per Medical Code and as per Government Order and issued time to time. He has also pointed out that in case of regular 3 member medical board Rs.60/- will be collected as fees and shared between the members of the board and the government equally. If it is a special board consist of five members of various specialities Rs.100/- has to be collected, out of which Rs.50 will be shared by the members of the board and Rs.50/- to be deposited in the Government account after completion of medical board. In the absence of specific rule or guidance from the authority concerned for exemption of fees, the police department cannot seek exemption as a matter of right.

21. In this context, apart from PW.7 who has been treated as hostile by the prosecution, it is also appropriated to consider the ambiguity in the medical code and subsequent communications by the department regarding collection of fees.

WEB COPY

22. The learned counsel appearing of the appellants would draw the attention of this court to G.O.Ms.No. 743 dated 06.08.2001 issued by Home Department, State Government of Tamil Nadu in respect of exemption granted to warden in Jail Department selected during the year 2001 and exemption granted to Grade-II. W.P.C in G.O.Ms.No. 8 of 2003 dated 02.01.2003. Perusal of those

G.Os and reading of Code 504 it is amply clear that much water has flown, after the medical code revised in the year 1951. The Government has taken conscious decision to issue Government Order as and when required, in case of exempting provisionally selected candidates of Police Department from paying fees for their medical examination. In the absence of any such specific G.O. for exempting Grade-II Police Constables provisionally selected in the year 2003, the dean of the hospital has taken conscious decision to collect fees and his decision is being reflected in all his communication which are marked as Ex.D4, Ex.D.11, Ex.P.15 and Ex.D.17. From these documents, it is clear that Rs.100/- collected from each candidate towards medical examination by no such of imagination could be considered to have received as illegal gratification. The Exhibits mentioned above clearly goes to show that there is no clear direction to the hospital authorities regarding collection of fees for constituting special medical board and examining provisionally selected Police Constable Grade-II, who were not appointed and taken into Government Service.

23. The absence of *mense* to make pecuniary advantage could be inferred by the conduct of the accused persons who have not taken the money collected for medical board examination to their home but had kept in individual covers and left it in the office bureau.

24. In such circumstances, plausible explanation given by the Accused persons for receipt of money goes to show that they have taken the money not

as gratification or pecuniary advantage for themselves. They were under impression that provisionally selected Police Grade-II are neither Government Servant nor join the service. Therefore, they cannot seek exemption for payment of fees, in the absence of specific Government Order exempting them from paying fees, as it was exempted on previous occasion.

25. In the light of above circumstances, the Trial Court judgment holding the appellants guilty based on the version of the prosecution without considering the defence Exhibits and the evidence of PW.7 renders the Trial Court Judgment unsustainable and liable to be set aside.

26. Accordingly, these Criminal Appeals are allowed. The judgment of conviction and sentence passed by the learned Special Judge-cum-Chief Judicial Magistrate, Salem in Special C.C.No.61/2005 is hereby set-aside. The MO.1 of Rs.3,000/- shall be returned to Government Hospital Salem, to be remitted into the Government account and MO.8 of Rs.22,240/- shall be kept in fixed deposit, shall be withdrawn and remitted into the Government account. Fine amount if any paid by the appellants shall be refunded. Bail Bond executed if any by the appellants shall stand cancelled. The appellants are set at liberty forthwith unless their presence is required in connection with any other case.

23.01.2018

bsm

Index:yes/no
Internet:yes/no

To

1. The Deputy Superintendent of Police,
Prevention of Corruption and Vigilance Department,
Salem.
2. The Additional Public Prosecutor, (Criminal Side)
High Court, Madras.



WEB COPY

Dr.G.Jayachandran,J.

bsm



Pre-delivery judgment made in
**Criminal Appeal Nos.158
& 165 of 2009**

WEB COPY

23.01.2018