Bail Slip

That the Appellant/Accused namely A.Viswanathan, S/o.Arasan, was directed to be released on bail as per order of this Court dated 22.07.2009 and made iin MP.1 of 2009 in Crl.A.386/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.02.2018	Pronounced on: 06.03.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.386 of 2009

A. Viswanathan, ... Appellant/Accused

/versus/

State, rep. by The
Deputy Superintendent of Police
Vigilance and Anti-corruption,
Cuddalore.
Cr.No.2/AC/96/Cuddalore. ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code and Section 27 of the Prevention of Corruption Act, against the Judgment made in Special Case No.4 of 2001 on the file of the Chief Judicial Magistrate (Special Judge) Cuddalore convicting and sentencing the appellant/accused to undergo R.I for one year and to pay a fine of Rs.500/- in default RI for 3 months under Sections 13(2) r/w 13(1)(a) of Prevention of Corruption Act 1988.

For Appellant : Mr. Sai Krishnan
for M/s. Sai Bharathi & Ilan

For Respondent : Mr. P.Govindarajan,
Additional Public Prosecutor

J U D G M E N T

The appellant herein while serving as Executive Engineer, Tamil Nadu Electricity Board, Virudhachalam Division, Cuddalore District during the year 1993 to 1996, was found to be in the habit of receiving illegal gratification from the farmers for providing service connection to their agricultural land. Based on the reliable information, First Information Report was registered on 29.08.1996 by the DSP, DV and AC, Cuddalore. After investigation, final report was laid stating 15 incidents of obtaining illegal gratification. Charge was framed for offence under section 13 (1)(a) punishable under section 13 (2) of the prevention of corruption Act. The trial court convicted and sentenced the appellant to undergo one year rigorous imprisonment and to pay fine of Rs 500/- in default to undergo 3 months RI.

2. The said judgment of conviction and sentence passed in Special C.C.No.4 of 2001 on the file of Chief Judicial Magistrate/ Special Judge Cuddalore is impugned in this appeal.

The case of the prosecution:

3. Thiru. Viswanathan, the appellant herein, was working as the Executive Engineer, TNEB in Virudhachalam during the period from 28.07.1993 to 15.06.1996. While so working he abused his position as a public servant, demanded and accepted illegal gratification varying from Rs.200/- to Rs.6000/- from 15 persons in the following manner:

1. About 2 months prior to 28.02.1995 a sum of Rs.200/- from Tr.Kolanchinathan and gave him service connection No.150 on 28.02.1995.

2. About 2 months prior to 02.10.1995 a sum of Rs.250/- from Tr.Rangasamy and gave him service connection No.130 on 02.10.1995.

3. A few days prior to 01.10.1994, a sum of Rs.5000/- from Tr.Vinayagamoorthy, and gave him service connection on 01.10.1994.

4. During the month of May 95 at his residence in Boothamur a sum of Rs.1000/- from Srinivasan and only thereafter took action on his application for service connection to his rice mill. After remittance of the deposit, the accused still delayed to effect service connection. When Srinivasan called on the accused he demanded and accepted a further sum of Rs.1000/- and then only the accused gave the service connection No.593 on 22.02.1996.

5. About 15 to 20 days prior to 07.02.1994, a sum of Rs.1000/- from kandasamy and gave him service connection No.719 on 07.02.1994.

6. About a month prior to 12.09.1994, a sum of Rs.500/- from Radhakrishnan and gave him service connection No.747 on 12.09.1994.

7. About 10 days prior to 23.05.1995, a sum of Rs.500/- from Paramasivam and gave him service connection No.814 of 23.05.1995.

8. About 2 months prior to 27.06.1996, a sum of Rs.500/- from Muthusamy and gave him service connection No.228 on 27.06.1996.

9. About 10 or 20 days prior to 26.04.1996, a sum of Rs.500/- from Sivan and gave him service connection No.813 on 26.04.1996.

10. On 19.06.1995 a sum of Rs.1000/- from Siva for giving him service connection. However, as the accused was transferred he could not effect the service connection.

11. In the Months of June, 96 a sum of Rs.500/- from Poomalai for giving his service connection.

12. During the year 1992. a sum of Rs.200/- from Rajendran for name transfer and again at the end of the year 1993 another sum of Rs.200/- for giving him a service connection.

13. On 10.09.1995 a sum of Rs.5000/- from Ramesh on installing a new transformer of 250 K.W capacities and give a new service connection on 21.10.1995.

14. During the month of July 1995 a sum of Rs.4000/- from Palani and another sum of Rs.2000/- after some time for giving service connection to the motor pump sets in the area beyond the jurisdiction of the accused.

15. Around March 1995 a sum of Rs.1000/- from D.Rangasamy S/o Dharman for giving service connection in the name of his minor son Karthikeyan under Self finance scheme and demanded a further sum of Rs.4000/- toward the same.

4. To prove the case, the prosecution has examined 23 witnesses and exhibited 35 documents. 5 exhibits were marked on the side of the defence. Out of 23 witnesses, except PW-2 Kolanjinathan and PW-3 Rangasamy all other witnesses from whom the accused alleged to have demanded and accepted illegal

gratification, turned hostile to the prosecution. The trial court relied upon the evidence of PW-2 and PW-3 found it inspires the confidence of the court and held the appellant / accused guilty.

5. The Learned counsel for the appellant submitted that, the trial court has failed to appreciate the evidence properly. The responsibility of giving service connection to the agriculture motor pump set is vested with the Assistant engineers and Assistant Executive Engineers, but not with Executive Engineers. Further, except the motivated witnesses PW-2 and PW-3 no other witness has supported the case of the prosecution. Even PW-2 and PW-3 are not certain or specific about the date on which the bribe was demanded and accepted. A vague allegation without any corroboration regarding demand or acceptance, the trial court ought not to have convicted the appellant.

6. The contradictions and inconsistence in the evidence of PW-2 and PW-3 regarding the time of their application, demand of illegal gratification and receipt of the illegal gratification all put together goes to show their evidence is palpable false. These two witnesses are hand-picked witnesses by the investigating officer (PW-22) who at the instigation of PW-20 (Senthamizhchei) Executive Engineer has foisted the case.

7. Apart from the factual aspect, the learned counsel also pointing out the error in the sanction order exposing the non application of mind by the sanctioning authority, contented that the charges framed and sanction order are inconsistent and therefore the appellant is entitled for acquittal for want of valid sanction.

8. The prosecution registered two cases against the appellant, one for disproportionate assets and another for habitually receiving illegal gratification. According to PW-1, the authority who has accorded sanction to prosecute the appellant admits that he has given sanction to prosecute the appellant for his offences under section 120 B IPC and section 7 and 13 (1) (a) and (d) of Prevention of Corruption Act. The sanction order indicates he perused records pertaining to offence of conspiracy involving the appellant and 10 others. Whereas the charge as framed by the trial court is for obtaining illlegal gratification from 15 persons in which the appellant alone is the accused and tried for offence under section 13 (1) (a) and not for offences under section 120 B IPC or section 13 (1) (e) of the PC Act.

9. The first information report is alleged to have been registered based on the memo received from the Directorate of Vigilance and Anti-corruption by PW-22. The said memo dated

18.08.1996 not placed before the court. The delay in registering the FIR not explained. The person who registered the FIR and investigated is one and the same, he is not legally authorised to investigate. Therefore the trial court judgment has to be set aside.

10. Per contra the learned Additional Public Prosecutor for the DV & AC submitted that, the sanction order cannot be questioned at appellate stage even if there is any error or irregularity in the sanction order. The trial court has rightly discarded the minor contradictions and omission in the depositions of PW-2 and PW-3 who are rustic witnesses and they were asked to give evidence after 12 years from the occurrence. The omission on their part to tell the exact date of demand and receipt of the bribe money by the appellant does not go to the root of the case, since the witnesses have categorically stated that, two months prior to the date of the service connection given to them, the accused demanded money to process their application and one payment of the money he demanded, within two to two and half months time they got the service connection.

11. Further the other official witnesses from TNEB examined by the prosecution also spoken about the abuse of official position by the appellant by deposing that Olaiyur village does not fall within the territorial jurisdiction of Viruthachalam Division. Despite that fact, the accused/appellant had given about 12 service connections to the subscribers at Olaiyur. This gross violation of territory was done by the accused because he has obtained illegal gratification from them to provide service connection. The evidence of PW-11, 12, 17,20 and 21 are the officials of TNEB. They have deposed that the accused had given service connections to consumers of Olaiyur village which fall under Ariyalur division, out of turn and out of Viruthachalam division jurisdiction, which is gross abuse of his official power. Therefore the trial court judgment has to be confirmed.

Point of consideration:

> Whether there are material evidence to hold the accused habitually used to obtain illegal gratification for his or others benefit ?

12. The Prosecution to prove the charge has examined 23 witnesses. PW-1 the authority who has accorded sanction would depose that he has perused the records placed before him by the investigation agency before according the sanction. Ex P-1 the order sanctioning prosecution reveals that PW-1 has accorded sanction to prosecute the appellant for the offence of

conspiracy between the appellant and 10 others to provide service connection to the consumers at Olaiyur village which does not fall within the jurisdiction of Viruthachalam Division and outside the limit of the appellant/accused. For the said illegal act the appellant had demanded Rs one lakh from those applicants and had received Rs 80,000/- as advance. To circumvent the monetary limitations, the appellant has split up the estimation to put up high tension transformer line from T.V.Patur to Olaiyur.

13. Between April 1995 and October 1995, the demand and acceptance of bribe ranging from Rs 200/- to Rs. 6000/- from 10 private individuals namely Thiruvalargal.M.Velayutham, V.Kaliyaperumal, D.Krishnamorthy, M.Srinivasan, R.Subramanian, R.Kesavan, Periyasamy, A.P.Arumugam, N.Balasundaram and S.P.Kaliyaperumal either to provide service connections to their motor pump-set at Olayiur village, which is under the jurisdiction of Ariyalur Division.

14. Whereas the charge framed by the trial court against the accused is for demand and acceptance of illegal gratification from 15 persons. The private individuals name found in the sanction order does not tally the names found in the charge. Further, the FIR registered against this appellant indicates only three incidents of demand and acceptance of bribe. First from Vinayagamoorthy a sum of Rs.5000/- second from Kolanjinathan a sum of Rs.250/- and third from Rangasamy a sum of Rs.250/-. Later after investigation the prosecution has collected details about 12 more incidents of bribe demand and acceptance by the accused. Therefore the final report has included those incidents also. Whereas the sanction to prosecute does not cover the incidents for which he was tried.

15. The trial court has framed single charge for the habitual acceptance of illegal gratification. No specific charge framed for violating the territorial limit in giving service connections to the Olaiyur consumers taking illegal gratification. The said offence being a distinct offence, separate charge should have been framed against the accused and tried for the said offence. In the absence of charge, the evidence of the official witnesses incriminating the appellant for giving service connection beyond his territorial limit, could not be a ground to convict him, when the charge is not for that violation.

16. So far the charge is concerned, though the prosecution has examined about 10 witnesses out of 15 persons who were alleged to have given bribe to the accused to get service connection by out of turn, only two of them have supported the case of the prosecution. They are PW-2 Konlanjinathan and PW-3

Rangasamy. The scrutiny of PW-2 deposition reveals, he gave application (Ex.P-2) for service connection on 26.09.1990. He got connection on 28.02.1995. As per his deposition, ten year prior to the date of his deposition (01.08.2007) he met the accused. The accused demanded Rs.250/- to provide service connection under Special priority category. He paid the bribe, he got the service connection after two months. The scrutiny of PW-3 deposition reveals, he applied for 7.5 HP service connection on 2.3.1987 (Ex.P-3). The executive engineer of TNEB vide his letter dated 4.08.1994 has informed him to come in person along with documents on 10.09.1994 for verification and he must be ready with motor and other infrastructure by 11.11.1994. PW-3 Rangasamy has made a request to EB on 8.09.1994 to increase the capacity of motor, from 7.5 HP to 15 HP since the ground water level has gone down and higher horse power is required to draw water. The appellant as Executive Engineer has considered his request and issued order on 12.09.1994 permitted for 15 HP motor. The file marked as Ex.P-3 further reveals that service connection for Rangasamy (PW-3) was given on 05.01.1995. PW-3 has given evidence that five years after applying for service connection, he met the accused, he told him that if he give bribe, he will consider his request. He offered Rs 250/- to him, the accused accepted it. Within two to two and half months he got the connection.

17. The other private individuals PW-4 to PW-10, PW-15 and PW-18, have turned hostile to the prosecution. Most of these witnesses have deposed that they don't know the accused. They have uniformly deposed that they never met the accused or gave bribe to him for getting service connection. PW-8 Siva has deposed that there was delay in getting service connection so he went to EB office and enquired. Somebody told him, if he give bribe he will get connection out of turn, he did not give bribe. After one year he got connection. Apart from these private individuals, PW-16 Pasupathi Ramkumar, Assistant Engineer has deposed that, the application of one Paamalai. He has deposed that, Paamalai told him that the accused demanded Rs 1000/- as bribe to give service connection. Paamalai was not examined by the prosecution.

18. PW-16 evidence is hearsay in nature and inadmissible. Besides something hearsay, the other portion of his deposition which is not the case of the prosecution puts his evidence under doubt. Ex D-2, dated 24.06.1996, the show cause notice issued by the accused to PW-16 pointing out defects and lapse at JE/O&M/ Nallur Section during his surprise inspection appears to be the reason for PW-16 to depose against the appellant.

19. The trial court without considering the infirmity and inconsistency in the prosecution case in Ex P-1 sanction for prosecute, framing of charge, contradictions and vagueness of

facts had erroneously held the accused guilty by resorting to section 20 of the prevention of Eorruption Act. This section can be resorted only if prosecution proves the demand or acceptance of money. When the prosecution evidence PW -2 and PW-3 is weak and vague, the demand or acceptance of money by accused cannot be held as proved. Therefore, presumption under section 20 of PC Act cannot be drawn.

20. Since, the trial court has erred in appreciating the evidence properly and wrongly drawn the presumption against the accused without proof of demand or acceptance of money, the judgment of the trial court is liable to be set-aside.

21. In the result, the Criminal Appeal No.386 of 2009 is allowed. The judgment of conviction and sentence passed by Chief Judicial Magistrate / Special court, Cuddalore in C.C.No.4 of 2001 is set aside. Fine amount paid if any shall be refunded to the appellants. The appellants are set at liberty forthwith unless their presence is required in connection with any other case. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bsm
To
1. The Chief Judicial Magistrate (Special Judge),
Cuddalore.

2. The Deputy Superintendent of Police
Vigilance and Anti-corruption,
Cuddalore.

3. The Public Prosecutor,
High Court, Madras.

Copy to:The Section Officer,
Criminal Records,
High Court, Madras(2 copies)

+1cc to M/s.SaiBharath, & Ilan, Advocate Sr.No.17251

AD(CO)
sm:26.3.2018

judgment made in
Criminal Appeal No.386 of 2009