

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.07.2017

Pronounced on : 04.09.2018

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.484 of 2009
and M.P.1 of 2009

State rep.by

The Inspector of Police,
Vigilance & Anti Corruption,
Dharmapuri.

... Appellant/Complainant

Vs

1. P.Perumal,
Special Sub Inspector of Police,
Karimangalam Police Station,
Krishnagiri District.

2. K.Radhakrishnan

... Respondents/Accused 1& 2

Prayer: Criminal Appeal filed under Section 378 (1) of the Code of Criminal Procedure, praying to allow this appeal and set aside the judgment of acquittal of the respondents/accused (A1 & A2) passed by the learned Chief Judicial Magistrate and Special Judge, Krishnagiri in Special C.C.No.34/2004, dated 04.05.2009, convict the respondents/accused (A-1 & A-2) for the offences framed against them, pass sentence against them in accordance with law.

For Appellant : Mr.R.Ravichandran
Govt.Advocate (Crl.side)

For Respondents : Mr.V.Gopinath, Senior counsel for
Mr.L.Mahendran for R1.
Mr.S.Suresh for
Mr.John Sathyan for R2.

J U D G M E N T

This appeal has been preferred by the appellant challenging the respondents acquittal.

2. The case of the appellant is that on 18.01.2003 mid day at Out Post Police Station, Krishnagiri town Bus stand, first respondent/P.Perumal, Special Sub Inspector of Police, Karimangalam Police Station was on duty at Krishnagiri town (Crime) Police Station and demanded a sum of Rs.5,000/- from the defacto complainant K.Velavan as gratification other than legal remuneration for not registering a theft case against him in connection with sale of Yamaha RX135 TN29 D1107 Motor Cycle suspected to be a stolen vehicle in which he was not concerned and later reduced the demand of Rs.5,000/- to 2,000/-, on the said date and directed him to come on 25.01.2003 with the demanded bribe money. In pursuance of the said demand on 25.01.2003 the defacto complainant K.Velavan met the first respondent P.Perumal, Sub Inspector of Police at out post station bus stand, Krishnagiri and expressed his inability to pay the illegal gratification. The first respondent reiterated the demand and directed him to pay the same within the evening of 21.05.2003 otherwise he would file a case against him.

3. In pursuance of the said demand, on 21.05.2003 between 16:55 hrs and 17:40 hrs in and around to the out post police station bus stand Krishnagiri town, the first respondent demanded a sum of Rs.2,000/- as illegal gratification from the defacto complainant in the presence of official witness Ravichandiran for not foisting a theft case against him in connection with RX135 TN29 D1107 Yamaha Motor Cycle suspected to be stolen and directed him to give it to the second respondent/Radhakrishnan to receive the illegal gratification from the complainant and thereafter he would get back the same from the second respondent. The second respondent received the illegal gratification from the defacto complainant and thereby abated the first respondent to get the illegal gratification. Thereby the first and second respondents committed offence punishable under sections 7 and 12 r/w 7 and 13(2) r/w13(1) (A) (D) of the Prevention of Corruption Act 1988, respectively.

4. On 18.01.2003 between 10:45 hrs and 12:30 hrs at Kaveripattinam bus stand, the first respondent demanded a sum of Rs.10,000/- from witnesses Kouravan and Saravanan and accepted Rs.5,000/- as illegal gratification for not seizing the RX135 TN29 D1107 Yamaha two wheeler from them. As suspected to be stolen and thereby the first respondent committed the offence punishable under section 7 and 13(2) r/w 13(1) (A) (D) of the Prevention of Corruption Act 1988.

5. In the course of same transaction and in pursuance of the said demand on 25.01.2003 between 16:55 hrs and 17:40 hrs in and around out post police station Bus stand Krishnagiri town the first respondent being a public servant by corrupt and illegal

means and by abusing his official position has obtained a sum of Rs.2,000/- as a reward or pecuniary advantage for himself from the above said defacto complainant and Rs.5,000/- from the above said witness. Under these circumstances stated above for not foisting theft case and not for seizing the Yamaha two wheeler RX135 TN29 D1107 respectively and thereby the first respondent has committed an offence of criminal misconduct punishable under Section 13(2) r/w 13(1)(a) of the Prevention of Corruption Act 1988.

6. In order to prove the case of the appellant, on the side of the prosecution as many as 14 witnesses were examined, 28 exhibits were marked and 7 materials objects were exhibited.

7. After the completion of the evidence of the prosecution incriminating materials were put before the respondents 1 & 2, who denied as false evidence, but on the side of the defence, neither oral nor documentary evidence were produced.

8. After hearing the arguments on either side, the trial Court acquitted the respondents.

9. Feeling aggrieved with the judgment of acquittal passed by the Special Judge, the appellant herein/State has preferred the present appeal.

10. Since this Court is the first appellate Court, as a fact finding Court has to reappreciate the entire evidence on record independently.

11. The case of the appellant/State is that there is allegation against the first respondent P.Perumal, Special Sub Inspector of Police that not to file a theft case; demanded Rs.5,000/- from Velavan (defacto complainant) and later reduced to Rs.2,000/- ; that he instructed to the second respondent to collect bribe money; as per investigation, the second respondent collected the bribe money, therefore first respondent was charged the offence for demanding illegal gratification and second respondent was in abetment to the first respondent for demanding illegal gratification. After receiving the complaint from the defacto complainant, one Velavan registered a case in Crime No.1/AC/2003 under Section 13(2) r/w 13(1) (a) of Prevention of Corruption Act and took up investigation by the Inspector of Police, Vigilance and Anti Corruption. A trap was arranged by him on the same day. During the Pre-trap proceedings two official witnesses were summoned and they were introduced to the complainant. Both the official witnesses were shown to the complainant and pre trap was translated. Thereafter proceeded to spot, after completing trap, as per the direction of the Court they sent the sample to the Forensic

Science Department for chemical analysis, later received report and after completing investigation filed charge sheet. By taking the said charge sheet, the Special Court has taken up the case on file in C.C.No.34 of 2004.

12. The respondents/accused denied the allegation in respect of the charges alleged against them. Therefore, charges framed against the first respondent for the offences punishable under Section 7, 13(2) r/w 13(1) (a) (d) of Prevention of Corruption Act and the charges framed against the second respondent for the offences punishable under Section 12 of Prevention of Corruption Act. According to the appellant during the trial, the prosecution examined as many as 14 witnesses. One Periyayya was examined as PW1 who has spoken about accorded sanction to the prosecution against the first respondent. Defacto complainant was examined as PW2 who has spoken about the context of the case and circumstances leading to the trap of both accused and other relating facts. Then the one Ravichandiran Revenue Inspector was examined as PW3 who has spoken about the fact of the case and that he corroborated the evidence of PW2/defacto complainant in respect of trap proceedings and attestation in the seizure mahazar, seizure of money and arrest of both accused.

13. Kouravan was examined as PW4 who has spoken about the purchase of Yamaha RX135 TN29 D1107 motor cycle from one Rathinavel and the demand of bribe of Rs.5,000/- by A1 and for not seizing the Yamaha RX135 TN29 D1107 Saravanan was examined as PW5 and he has spoken about the purchase of RX two wheeler from one Rathinavel and also about the demand of illegal gratification of Rs.5,000/- as bribe by A1. Rajendran was examined as PW6 who has spoken about the registration of the vehicle bearing Reg.No.TN 29 D 1107 and its original owner.

14. One Jayaraman was examined as PW7 who has spoken about his presence in the out post, Police Station Krishnagiri and also about the trap laying proceedings conducted by PW13.

15. One V.Mani was examined as PW8 who has spoken about the involvement of the first respondent in this case. One Martin was examined as PW9 and spoken about SDO party and also about involvement of the respondents in this case. One Sivaprakasam was examined as PW10 who has spoken about the involvement of the first respondent in this case. One D.Arumugam was examined as PW11 who has also spoken about the involvement of the first respondent in this case. PW12, Santhalingam who has spoken about the receipt of the samples/Material objects 2 to 7 and sending them for Chemical analysis. M.Somasundaram who is PW13 has spoken about the registering the case, arranging the trap, recovery of tainted money from the second respondent and arresting of both the respondents and filed the case. K.Somasudaram Inspector of Police, Vigilance and Anti Corruption

was examined as PW14 who has spoken about further investigation, examination of witnesses, receipt of the prosecution sanction order and laying of the charge sheet against both accused under Section 7, 12, (1) (d) and 13(2) of the Act.

16. The Special Judge, after considering the entire oral and documentary evidence wrongly held that the appellant has not established the case against the respondents/accused beyond reasonable doubt and therefore acquitted the respondents. Therefore, the judgment of the trial Court is liable to be set aside.

17. It is to be noted that there are allegations against the first and second respondent in respect of the offences u/s. 7, 12, (1) (d) and 13(2) of the Act. Though the defacto complainant is alleged to have given the complaint before the Inspector of Police, Vigilance and Anti Corruption, he has not supported the case of the prosecution and he has turned hostile. The other witnesses PW4 and PW5 had made the main allegation against the respondents that first respondent demanded money from P.W.2 for not foisting the case and initially demanded Rs.5,000/- and later reduced in it to Rs.2,000/-. But PW1 has not substantiated its case even before the trial Court. Further the main contention of the appellant/State is that the first respondent also demanded money from PW4 and PW5 for not recovering Yamaha. But, the charges levelled against the respondents are not substantiated by the appellant before the trial Court. PW2, PW4 & PW5, who have not spoken about the demand made by the respondents during the trial. Even in the charge sheet, the prosecution alleged that first respondent demanded money from PW2, PW4 & PW5, but that has not been proved by the appellant. Therefore, in the cases of appeal against the acquittal, the prosecution has to prove the case beyond reasonable doubt regarding the involvement of the respondents and that there is perversity in the judgment passed by the Special Judge. But, in this case, on a perusal of the entire oral and documentary evidences, there is no doubt the prosecution has made allegations against the respondents and also filed charge sheet against the respondents and also while examining the witness before the Court the main witnesses PW2, PW4 and PW5 have not supported the case of the prosecution. The main ingredients to constitute the offence under Sections 7, 12, (1) (d) and 13(2) of the Act, are proof of demand, acceptance and recovery of illegal gratification. But in this case, the Prosecution has failed to prove the above three ingredients beyond reasonable doubt. Even though, there is allegation regarding demand of illegal gratification and acceptance of the same and recovery of tainted money were spoken by the official witnesses but the complainant have not deposed about it, when two views are possible, the benefit of doubt always to be given in favour of the respondents. In this case, demand and acceptance have not been proved as alleged by the prosecution and further the main

witnesses have not spoken about the involvement of the respondents in this case before the trial Court. The statements recorded by the appellant have not been substantiated before the trial Court. Therefore under these circumstances, when there is a benefit of doubt, the benefit of doubt always goes in favour of the accused and the respondents found not guilty.

18. The trial Court while considering the factual aspects, discussed the evidence of Prosecution witnesses 1 to 14 elaborately and came to the conclusion that the prosecution has not proved the case beyond reasonable doubt. Therefore in view of the above said discussions, this Court found there is no reason to interfere with the judgment of acquittal passed by the trial Court and the appeal is liable to be dismissed.

19. Accordingly, the Judgment of acquittal dated 04.05.2009 passed in C.C.No.34 of 2004 by the learned Special Judge-cum-Chief Judicial Magistrate, Krishnagiri is hereby confirmed.

20. In the result, the criminal appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The learned Special Judge-cum-Chief Judicial Magistrate, Krishnagiri.

2. The Public Prosecutor, High Court, Madras.

3. The Inspector of Police, Vigilance & Anti Corruption, Dharmapuri.

Copy to

The Section Officer,
Criminal Section, High Court,
Madras.-104

+1cc to Mr.L.Mahendran, Advocate, S.R.No.61553

CrI.A. No.484 of 2009
and M.P.No.1 of 2009

KGK(CO)
GSP(24/09/2018)