

BAIL SLIP

The Appellant/Accused namely G.Kandhasamy, S/o.Govinda Gounder was directed to be released on bail as per order of this court dated 27.08.2009 in CRL.M.P.1 of 2009 in Crl.A.No.504 of 2009 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :31.01.2018

PRONOUNCED ON :19.02.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.504 of 2009

G.Kandhasamy .. Appellant/Accused

/versus/

State rep.by Inspector of Police,
Vigilance and Anti Corruption
Krishnagiri
Crime No.05/AC/2004

.. Respondent/Complainant

Criminal Appeal is filed under Section 374(2)(b) Cr.P.C., against the judgment dated 14.08.2009 made in Spl.C.C.No.1 of 2008 passed by the learned Chief Judicial Magistrate, Krishnagiri by convicting and sentencing the appellant for offences under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 to undergo 2 years RI and imposed a fine of Rs.2000/- i/d to undergo 3 months SI.

For Appellant :Mr.S.Ashokkumar, Sr.C for
Mr.P.Palaninathan

For Respondent :Mr.P.Govindarajan, APP (V&AC)

J U D G M E N T

This appeal is directed against the judgment of the Chief Judicial Magistrate, Krishnagiri rendered in Spl.C.C.No.1 of 2008 dated 14.08.2009. The appellant herein was found guilty of offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of

Corruption Act, 1988 for demanding and accepting Rs.2,000/- as illegal gratification from one Paranthamanan to release him on bail in a Motor Accident case and to send his vehicle involved in the accident for Motor Vehicle Inspector's Inspection at the earliest possible time. The trial Court sentenced the appellant to undergo 2 years RI and to pay a fine of Rs.1,000/- in default to undergo 3 months SI for each of the offence.

2. The facts unfold through prosecution witness is as under:-

A tempo van bearing No.TN 51 U 1703 owned and driven by Paranthamanan, while proceeding towards Bangalore, hit a cyclist at about 07.00 a.m. on 31.08.2006 near Ankinayanapalli in Bargur Police Station limit. A complaint regarding motor accident has been lodged by one Venkatachalam on 31.08.2006 at about 14.00 hours and First Information Report has been registered in Crime No.469 of 2006 at Bargur Police Station for the offence under Sections 279, 337 IPC against Paranthaman.

3. The Head Constable Mr.Kandhasamy(accused/appellant) had registered the First Information Report and taken up the investigation. To release Paranthaman on bail without remand and to send the vehicle involved in the accident for motor vehicle inspection at the earliest, he has demanded a sum of Rs.2,000/- from Paranthaman and allowed him to go out of the police station enable him to get the money and pay him. Mr.Paranthaman, who was not inclined to give any bribe to avoid arrest and expedite the motor vehicle inspection, had gone to the Deputy Superintendent of Police, Vigilance and Anti Corruption, Special Unit, Krishnagiri and had lodged a complaint alleging demand of illegal gratification by Mr.Kandhasamy, Head Constable attached to Bargur Police Station.

4. The complaint against Mr.Kandhasamy was taken up for investigation under Dharmapuri, Vigilance and Anti Corruption in crime No.5/AC.2006 under Section 7 of Prevention of Corruption Act, 1988 on 01.09.2006 at 13.00 hours against the accused Mr.G.Kandhasamy. The trap laying officer has arranged for official witnesses to oversee the trap proceedings. Before proceeding to the scene of trap viz., Bargur Police Station, the pre-trap proceeding has been conducted in the presence of the witnesses and after demonstrating the significance of phenolphthalein test, they have gone to Bargur Police Station at around 17.00 hours and the accused/appellant Mr.Kandasamy, Head Constable was caught soon after receiving the bribe money of Rs.2,000/- smeared with phenolphthalein. After drawing sample of hand wash and shirt top left side inner pocket wash, he was arrested for receiving illegal gratification of Rs.2,000/-.

5. After completion of investigation, the prosecution has laid final report. Based on the final report, the trial Court has framed charges under Sections 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 14 witnesses. 24 exhibits were marked and 7 material objects were marked on the side of the prosecution. For the defence, one Jayavel, Ex-President of the Village had been examined. No exhibits marked on the side of the defence.

6. The trial Court, after appreciating the evidence, had found the accused-Kandhasamy guilty of charges and sentenced him as stated above. Aggrieved by the same, the present appeal is preferred on the ground that the trial Court failed to note that the prosecution case that PW-2[Mr.Paranthaman] on 31.08.2006 at 07.00 a.m., hit PW-10[Mr.Venkatachalam] at Anganahalli Highway of Chennai to Bangalore route with his Tempo Van bearing Reg.No.TN-51 U 1703. For that offence case registered by the appellant/accused on the same day in Cr.No.469/2006 under Ex.P15-FIR. The appellant/accused arrested PW-2[Mr.Paranthaman] and also seized his vehicle. PW-13 [Mr.M.Balasubramanian] recovered Ex.P14-remand report of PW-2[Mr.Paranthaman] dated 01.09.2006 from the appellant/accused prepared to remand PW-2[Mr.Paranthaman] into the judicial custody. The appellant/accused also gave his explanation, when PW-13[Mr.Balasubramanian] arrested him that the amount was received only to give PW-10[Mr.Venkatachalam] as compensation. The above fact would go to show that if the appellant/accused wanted to remand PW-2[Mr.Paranthaman], he would have sent him to judicial custody on 31.08.2006 itself and not on 01.09.2006 when PW-2[Mr.Paranthaman] was in his custody from 31.08.2006.

7. Further, the trial Court failed to note that PW-2/defacto complainant who is the accused in Cr.No.469 of 2006 for the offence punishable under Sections 279 and 337 of IPC registered by the appellant in Bargur Police Station and both the offences are bailable one. Since the offences are bailable one, the appellant/accused allowed [PW-2] to make arrangement of settlement. The above fact would go to show that the appellant/accused made the remand report only on 01.09.2006 and was intended to send PW-2 to judicial custody if PW-2 [Mr.Paranthaman] does not turn up with the settlement amount.

8. The trial Court also failed to note that the PW-2 [Mr.Paranthaman] is a driver and owner of the said vehicle and it was fully loaded. PW-2 [Mr.Paranthaman] definitely would not want him to be imprisoned, when his vehicle with the loaded goods to be reached to Bangalore and therefore, he want to settle the matters. The appellant/accused did not let PW-2 [Mr.Paranthaman] to go from the clutches of law without settling

the matter with PW-10[Mr.Venkatachalam]. Therefore, PW-2 [Mr.Paranthaman] had set a trap as against the appellant/accused as if he demanded Rs.2000/- as illegal gratification from PW-2 [Mr.Paranthaman] for not to arrest him and to send the vehicle for inspection to Motor Vehicle Inspector.

9. The trial Court failed note that the PW-7[Mr.Dhanapal] and PW-8[Mr.Sekar] admitted that they saw DW-1[Mr.Jayavel] at Police Station on 01.09.2006 for settlement talk went on between PW-10[Mr.Venkatachalam] and PW-2[Mr.Paranthaman]. The above fact would clearly go to show that the appellant/accused did not receive the amount as illegal gratification. The money given to him was for the purpose of settlement arrived between PW-2 [Mr.Paranthaman] and PW-10[Mr.Venkatachalam]. The trial Court ought not to have rejected the evidence of DW-1[Mr.Jayavel] since his presence was corroborated by PW-7[Mr.Dhanapal] and PW-8[Mr.Sekar]. The trial Court rejected the evidence of DW-1 [Mr.Jayavel] citing that the DW-1[Mr.Jayavel] has admitted in his cross examination that he has visited the police station often for the criminal cases and he know the appellant/accused as Head Constable. The above finding of the trial Court is erroneous and mechanically convicted the appellant/accused and therefore, the conviction based upon the same is liable to be set aside.

10. The trial Court failed to note that the appellant/accused in his statement under Section 313 of Cr.P.C., and at the time of his arrest has categorically stated that the alleged amount received by him from PW-2[Mr.Paranthaman] is only as settlement to the victim PW-10[Mr.Venkatachalam] in the accident case. The above fact is admitted by PW-10 [Mr.Venkatachalam] and corroborated by DW-1[Mr.Jayavel] who is the witness for settlement talk with PW-2[Mr.Paranthaman] in the Bargur Police Station on 01.09.2006 and therefore, the conviction is liable to be set aside.

11. The learned Senior Counsel appearing for the appellant in support of the grounds of the appeal, would submit that the appellant as a Head Constable attached to Bargur Police Station, has duly discharged his duty by registering the motor accident case, in which the defacto complainant was driving the offending vehicle. He had also prepared the remand report and arrest card after conducting search of the person. He had entrusted the custody of the accused person with the Constables, who were in Para duty. The tainted money was given to the accused person under the pretest of compensation to be handed over to the victim boy to settle the issue amicably. DW-1[Tr.Jayavelu] former Panchayat President of Ankinayanapalli had corroborated the version of the defence that the Panchayat was held immediately after the accident wherein PW-2 [Mr.Paranthaman] had

agreed to pay Rs.2,000/- as compensation. It was agreed by all the parties that on 31.08.2006, PW-2[Mr.Paranthaman] will give Rs.2,000/- to the Head Constable Mr.Kandhasamy(accused) and DW-1 [Mr.Jayavel] which he will come and collect it from the accused on the next day.

12. Relying upon the letter to the Regional Transport Inspector for vehicle inspection prepared by the accused/appellant, arrest card, remand report which are marked as prosecution exhibits viz., Ex.P12, Ex.P13 and Ex.P12 respectively, the learned Senior Counsel appearing for the appellant would submit that the trial Court has misconceived the evidence and rendered erroneous judgment of conviction.

13. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the defacto complainant Mr.Paranthaman had in his deposition, narrated, how the accident took place at Ankinayanapalli village on 31.08.2006 at about 07.00 p.m. When he went to the police station to report about the accident, he was sent back saying they have not received any statement from the victim. He was asked to come again on 04.30 p.m. by the accused. When he again went to the police station, the accused demanded Rs.5,000/- for not remanding him to judicial custody and to release him on bail and also to forward the vehicle for inspection immediately. When he offered Rs.500/-, the accused after negotiation reduced the bribe amount to Rs.2,000/-. When PW-2[Mr.Paranthaman] could not give the money, he was detained by the accused in the police station the whole night. At about 11.00 a.m. On 01.09.2006, he took his signature in the register and sent him out to bring the bribe money. This part of the deposition of PW-2 [Mr.Paranthaman] is unassailed by the defence. Letter to the motor vehicle Inspector, arrest card and remand report which are marked as Exs.P12, P14 and P15, are also not in favour of the accused but fortifies the case of the prosecution as spoken through PW-2[Mr.Paranthaman]. By preparing arrest card, remand report, PW-2[Mr.Paranthaman] had been put under threat of remand so that he will shell away the bribe to the accused in order to avoid judicial custody.

14. It is further contended by the learned Additional Public Prosecutor that the appellant accepts the receipt of the money but he has not offered any explanation immediately after the trap. The explanation offered by him at the time of questioning him under Section 313 Cr.P.C. and the evidence of DW-1 [Mr.Jayavel] does not corroborate each other. The trial Court, after pointing out the contradiction between the explanation given by the accused person and the evidence of DW-1[Mr.Jayavel] has rightly rejected the explanation as an afterthought.

15. According to the accused/appellant, after completing the

rounds, when he returned to the police station on 01.09.2006 at about 05.00 p.m., he saw the relatives of the victim boy outside the police station and when he went to the station, the defacto complainant[PW-2] gave him Rs.2,000/- which was meant for compensation. Whereas, DW-1[Mr.Jayavel] the former village President had deposed that when he and other villagers went to police station on 01.09.2006 at about 05.00 p.m., to collect the compensation money, he saw only the van of the defacto complainant. If really Rs.2,000/- was meant for compensation to the victim boy, the accused could have directed the defacto complainant Paranthaman to straight away give the money to Jayavel(DW-1) or to the representatives of the victim, who were standing outside the police station instead of receiving it and keeping in his pocket.

16. On the other hand, if really the accused/appellant wanted to remand the defacto complainant, there is no reason for him to hold the process even after the preparation of remand report and arrest card. The delay in forwarding the accused person to the Magistrate and receipt of the money in the evening is sufficient proof to presume that the money was received as illegal gratification for not remanding the defacto complainant. When the demand and acceptance is proved, it is for the accused person to rebut the presumption that the money was received as legal remuneration and not as illegal gratification. Since the accused/appellant has failed to rebut the said presumption, there is no ground to sustain the appellant. Hence, sought for dismissal of the appeal.

17. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials on record.

18. Point for consideration:

Whether the tainted money Rs.2,000/- received by the accused/appellant was towards illegal gratification or otherwise?

19. The perusal of exhibits and oral evidence reveals that the accident took place on 31.08.2006 near Ankinayanapalli within the jurisdiction of Bargur Police Station. The complaint regarding the said accident has been registered by Bargur Police station on 31.08.2006 at 14.00 hours. The said First Information Report is marked as Ex.P15 and it has been prepared by the accused/appellant herein. Ex.P14- is the arrest card prepared by the accused/appellant in respect of the said motor accident. This document indicates that Paranthaman (defacto complainant) was brought to the station on 01.09.2006 at about 06.30hours. A request letter to the motor vehicle Inspector to inspect the

vehicle has also been prepared by the accused on 01.09.2006. However, neither PW-2 [Mr.Paranthaman] was remanded to the Judicial Custody nor his vehicle was sent to inspection by the appellant/accused herein.

20. The Vigilance team had gone to the Bargur police station on 01.09.2006 at 17.45 hours along with the defacto complainant Mr.Paranthaman and when they went there, the vehicle was parked outside the police station is a sufficient proof to hold that the accused/appellant had not acted upon as per Ex.P12 or Ex.P14. This is a strong indication to presume that the accused/appellant has prepared these documents only to threaten the defacto complainant to shell out bribe money under the fear of arrest. His explanation that the defacto complainant was handed over to the constables, who were in para duty, immediately after documentation, such as arrest card and remand report, is totally falsified through the evidence of the witnesses examined as PW-7 [Mr.Dhanapal] and PW-8[Mr.Sekar]. PW-5[Mr.Chandran] Inspector of Police in-charge of Bargur police station has also deposed that there is no record to show that the defacto complainant was handed over to the para constables by the appellant/accused.

21. The specific case of the accused/appellant is that the tainted money given to him by the defacto complainant(PW-2) was towards the compensation to the victim boy. This defence has not been proved through any plausible or acceptable evidence. In fact, the documents, which are marked as Exs.P12, P14 and P15 are quite contra to the explanation offered by the defence. In the cross examination of PW-10-Venkatachalam, who is the victim of the motor accident, does not speak about the demand of Rs.2,000/- as compensation. In his cross examination, it has also been elucidated that he heard from the relatives, who came to see him in the hospital that the Tempo driver has agreed to pay some money as compensation but not paid and he has filed petition for compensation before the Court.

22. If really the appellant/accused had prepared the remand report with the real intention to remand Mr.Paranthaman/defacto complainant, he need not have delayed the process. After preparing all the documents at 06.30 a.m., he has not executing the same till 06.00 p.m. on that day.

23. It should be bear in mind that when the acceptance of the money from PW-2[Mr.Paranthaman] is admitted by the accused/appellant, the burden of proof of his innocence shifts on him as per the Section 20 of the Prevention of Corruption Act, 1988.

24. On assessing the evidence of PW-10[Mr.Venkatachalam],

PW-7[Mr.Dhanapal], PW-8[Mr.Sekar] and DW-1[Mr.Jayavel], in the light of Exs.P12, P14, P15, the defence theory could not be probable, because according to the defence, the defacto complainant [Mr.Paranthaman] was arrested on 01.09.2006 at 06.30 a.m. and brought to the station soon after the remand report and requestion to RTO were prepared and handed over to the constables who were in para duty. Whereas, PW-4[Ms.Sangeetha] Sub Inspector of Police attached to Bargur police station, had deposed that on 01.09.2006 when she came to the police station at 06.40 a.m., he did not see any accused kept in lock-up. The accused Kandhasamy had not informed her anything about Mr.Paranthaman. There is no entry in the para duty book about the custody of Mr.Paranthaman. She had specifically stated the she never saw Mr.Paranthaman, till she left the police station at 10.00 a.m., on 01.09.2006. PW-8 [Mr.Sekar], in his deposition, has stated that on 01.09.2006, he left the police station at 08.00 a.m., and returned to the station at 05.00 p.m. The defacto complainant came to the police station in search of the accused Mr.Kandhasamy, he was informed that Mr.Kandhasamy had gone out and it will take some time for him to come back.

25. So, on a cumulative reading of evidence of PW-4[Mr. Sangeetha] and PW-8[Mr.Sekar], it is well established that the defacto complainant Mr.Paranthaman has not at all been in the police station on 01.09.2006 after 06.45 a.m. and he came to the police station only after 05.00 p.m. The arrest card Ex.P14 and remand report Ex.P15 are only make belief documents, which have been prepared by the accused person to extract money from the defacto complainant Mr.Paranthaman. The bribe money he received from the defacto complainant was not to arrest and is not actually for compensation. In the above said circumstances, this Court is of the view that the trial Court after deep analysis of the evidence and taking the judgments of the Higher Courts as precedent had rightly come to conclusion that the tainted money of Rs.2,000/- received by the accused is only for illegal gratification to do a favour for the defacto complainant by abusing his official position.

26. In view of the overwhelming evidence against the appellant/accused which proves beyond doubt the demand and acceptance of illegal gratification, this Court finds no reason to interfere with the judgment of the trial Court. Hence, this appeal is liable to be dismissed.

27. In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant by the trial Court viz. Chief Judicial Magistrate, Krishnagiri in Spl.C.C.No.1 of 2008 dated 14.08.2009 are hereby confirmed. The

trial Court is directed to secure the appellant accused to serve the remaining period of sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Krishnagiri
2. The Inspector of Police,
Vigilance and Anti Corruption,
Krishnagiri.
3. The Public Prosecutor, (V&AC)
High Court, Madras.
4. The Superintendent of Police,
Krishnagiri District
5. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.P.Palaninathan, Advocate, S.R.No.13158

Crl.A.No.504 of 2009

ssd(co)
cs/15/03/18

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