Bail Slip

The Appellant/Accused nereby A.Deenadayalan, was directed to release on bail as per order of this Court dated 18.3.2008 and made in MP.No.1/2008 in Crl.A.198/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2018

PRONOUNCED ON: 23.01.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.198 of 2008

A.Deenadayalan .. Appellant

/versus/

State represented by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-II Detachment,
Chennai-20. .. Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the conviction and sentence passed on him by the First Additional Sessions Judge in C.C.No.28 of 2002, dated 31.01.2008.

For Appellant :Mr.R.Karthikeyan
For Respondent :Mr.P.Govindarajan, APP

J U D G M E N T

The sole accused is the appellant herein. The appeal is directed against the conviction and sentence dated 31.02.2008 passed in C.C.No.28 of 2002 on the file of Ist Additional Sessions Judge, Chennai.

2. Brief facts of the case leading to the appeal:

Thiru.N.Sudarsan, Sanitary Worker of the Chennai Corporation attached to EVR Salai, Unit -9, Zone -3 absent from duty between 03.04.2001 to 17.10.2001 due to jaundice and anemic. On 18.10.2001, he reported duty at Corporation Office before the Conservancy Inspector Thiru.Deenadayalan (appellant herein) and submitted letter of absence for 198 days, medical certificate and fitness certificate and also requested the appellant to take him for duty. The appellant refused to receive the letter and medical certificate and demanded Rs.3,000/- as bribe to take him for duty. Therefore, Mr.Sudarsan met the Conservancy Supervisor Thiru.Arasakumar and gave a leave letter. The Conservancy Superivsor received the letter and made endorsement on the letter and gave it back to Mr.Sudarsan and told him to give it to the appellant. When Mr.Sudarsan came back to the appellant and gave his letter, the appellant, after receiving the letter and seeing the endorsement made by the Supervisor on the letter again reiterated his demand of birbe and told Mr.Sudarsan only if he give bribe of Rs.3,000/-, he will take him to duty. Again, on 24.10.2001, Mr.Sudarsan went back to the appellant and requested him to allot duty. The appellant told him not to disturb him frequently, to come and meet him after arranging Rs.3,000/- or else not to come. After much pursuation, the appellant reduced his demand to Rs.2,000/- and told Mr.Sudarsan, unless he give Rs.2,000/-, he will not take him back to duty and instructed him to come with money on 29.10.2001 before 4.00 p.m. Mr.Sudarsan is not inclined to give bribe, he reported the matter to the Vigilence and Anti-Corruption office at Adyar on 29.10.2001 at about 12.00 noon. The statement of Mr.Sudarsan was reduced into writing by Mr.Thamburaj, Police Constable. As per the instruction of the Deputy Superintendent of Police, Thiru.Vedarathinam, Inspector, registered the case and commenced investigation.

3. After demonstrating the trap proceedings to the witnesses, the bribe money smeared with phenolphthalein was entrusted to Mr.Sudarsan and entrustment mahazar was prepared and completed by 15.15 hours in the presence of witnesses. Thereafter, the defacto complainant Mr.Sudarsan along with the decoy witness Mr.P.V.Rajamani[PW-3] followed by the trap team went to the office of Conservancy Inspector, Unit- 9, Zone-3, EVR Salai, Corporation of Chennai. After waiting for the appellant till 6.30 p.m, they returned to Vigilance and Anti-Corruption Office since the appellant who left his office did not turn up to the office. The next day, on 30.10.2001 at about 7.00 am, again the defacto complainant Mr.Sudarsan[Pw-2], decoy witness Mr.Rajamani[PW-3], Mr.Vedarathinam[PW-6] Inspector and others went to the Corporation of Chennai and waited for the appellant Deenadayalan at his office.

4. At about, 9.00 am the appellant demanded Rs.2,000/- from Mr.Sudarsan and received it and kept in his shirt pocket. The demand and acceptance was witnessed by Mr.Rajamani[PW-3]. After giving the tainted money of Rs.2,000/- to appellant Deenadayalan, Mr.Sudarsan came out of the office and gave pre-arranged signal to the trap team waiting outside the office. The trap team went into the room of the appellant and recovered the tainted money from the appellant. His right hand and left hand were separately dipped in the sodium corroborate solution and the hands wash, which turned pink were collected in two separate bottle. Likewise, the shirt pocket wash with sodium corroborate solution was collected. The events, recovery of tainted money and the phenolphthalein test were reduced into writing. During

the interrogation, a sum of Rs.6,620/- in a blue colour zip bag found in possession of the appellant was also recovered under a separate mahazar.

5. On completion of the investigation, the prosecution has filed final report against the appellant Deenadayalan, Conservancy Inspector, Chennai Corporation under Sections 7 and 13 (1) (1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988 for demand and acceptance of Rs.2,000/- from Mr.Sudarsan, Sanitary worker and being a public servant for misconduct, by obtaining pecuniary advantage by corrupt and illegal means.

6. The prosecution to prove their case had examined 9 witnesses. Through these witnesses, 18 exhibits and 7 material objects were marked. The trial Court, accepting the case of the prosecution held the accused/ appellant guilty of offences under Sections 7 and 13(1) (d) of the Prevention of corruption Act. Sentenced him to undergo one year RI and fine of Rs.1,000/- and in default one month SI for each offence. The period of sentence already undergone shall be set off. The period of sentence ordered to run concurrently.

7. Submissions of the appellant:

The learned counsel for the appellant would submit that, the trial court failed to appreciate the evidence properly. The inordinate delay in getting sanction to prosecute had caused grave prejudice and it is fatal for the prosecution. The launching of prosecution even without mentioning the time of occurrence in the First Information Report and final report on the face of it renders the prosecution unsustainable. The officer, who filed the charge-sheet was not examined by the prosecution, thereby the accused is deprived of the valuable right of cross examining the material witness who had satisfied himself that prima facie material available to prosecute the accused.

8. The trial Court had failed to note that non-production of general dairy despite the petition to produce document; non-production of previous statement of PW-8; non-production of authorisation given to the Inspector by the Superintendent of Police to investigate the case, non-examination of one L.Mani, independent witness, who alleged to have been present, when the tainted money given to the accused, non-examination of Bhavaneeswari, DSP who received the complaint Ex.P-6 and made endorsement on it and non-examination of Thambiraj who alleged to have written the complaint, are all fatal to the prosecution case.

9. The trial Court had failed to consider the contradiction among the prosecution witnesses regarding the time of lodging the complaint Ex.P-6. Further, the admission of PW-8 [Mr.Vedarathinam] that he first asked the accused to handle the tainted money and then conducted phenolphthalein test vitiate the entire case of the prosecution. Above all, neither in the

entrustment mahazar nor in the recovery mahazar the denomination of the currencies smeared with phenolphthalein mentioned. Mere mentioning of note number without the denomination coupled with the fact that the properties were not sent to the Court immediately under Form-95, renders the prosecution case doubtful.

10. Submissions of the respondent:

On 18.10.2001 the accused Deenadayalan-Convervanacy Inspector demanded bribe of Rs.3,000/- from Mr.Sudarsan-Sanitary Worker (PW-2) to process his application to join duty after unauthorised absence of 198 days. Later, on 24.10.2001, he reduced the bribe amount to Rs.2,000/- and instructed PW-2 [Mr.Sudarsan] to come with money on 29.10.2001. On 29.10.2001, the accused was no present in his seat. So, the trap exercise was repeated on the next day and successful completed. The demand and receipt of illegal gratification found proved through the occular evidences of PW-2-Mr.Sudarsan/defacto complainant, PW-3-Rajamani (accompanying witness) , PW-8[Mr.Vedarathinam], Inspector/trap laying officer, PW-7[Mr.Visalakshi]chemical examiner and documentary evidence [Ex.P-5], which is the joining report letter with the endorsement of Mr.M.Arasakumar, Conservancy Supervisor[PW-5], that it is “very emergent, Conservancy Inspector please put up complete file and further remark” with his sign and date (18.10.2001) proves the fact that the appellant expecting bribe did not forward the complete file with remarks till the date of trap (30.10.2001).

11. The demand of bribe has been spoken by PW-2[Mr.Sudarsan] and PW-3[Mr.Rajamani]. The recovery of the tainted money is spoken by PW-3[Mr.Rajamani] and PW-8[Mr.Vedarathinam]. The recovery mahazar Ex.P-10 signed by independent witnesses and spoken by them coupled with the Chemical Analyst Test Report Ex.P-16 and the occular evidence of PW-7, establish the fact that the appellant-Deenadayalan had received Rs.2,000/- from PW-2[Mr.Sudarsan] on 30.10.2001 at about 9.00 am and the same has been recovered from him by PW-8[Mr.Vedarathinam].

12. In the absence of any plausible explanation for the receipt of the tainted money from PW-2[Mr.Sudarsan], it is to be presumed that the money he received is illegal gratification other than any legal remuneration. Therefore, the finding of the trial Court is legally and factually sustainable and the appeal is liable to be dismissed.

13. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent/State.

14. The learned counsel for the appellant would emphasis on the point that the complaint is borne out of mala fide intention of PW-2[Mr.Sudarsan], who abstained from duty without leave for 198 days and sought permission to join duty by furnishing false medical certificate, which does not carry the date of its

issuance. When that was objected to by the appellant and wanted to refer the complainant to medical board, he had designed the complaint as if he demanded bribe on 24.10.2001 and thereafter the belated complaint on 29.10.2001; delay in forwarding the First Information Report to the Court; non-examination of the Thambiraj, who alleged to have written the complaint Ex.P-6; non-examination of Bhavaneeswari, Deputy Superintendent of Police, who had authorised Mr.Vedarathinam,Inspector to investigate, though cited as witness in the final report but not examined and non-examination of Mr.Valsarajan Inspector who has lodged the final report, are fatal to the prosecution.

15. From the documents exhibited, this Court finds that Mr.Sudarsan [PW-2]-defacto complainant is not a person, who can fluently read and write. He had gone to the Vigilance office and had made oral complaint, which has been reduced in to writing by one Thambiraj. The defacto complainant has appeared before the Court and examined by the prosecution as [PW-2]. He had identified the complaint Ex.P-6 and his signature found in it. He has deposed on oath about the complaint he gave to the police on 29.10.2001. Except the time of the complaint which is doubtful due to the contradiction in his chief and cross examination, his deposition substantially goes with the content of the complaint. Therefore, the non-examination of the scribe does not renders the case of the prosecution void.

16. However, this Court finds certain other lacunae in the prosecution case which makes the prosecution case very feeble, weak and doubtful. First of all, this Court finds that the case of the prosecution is that the complaint Ex.P-6 was alleged to have received on 29.10.2001 at 13.30 hrs by Mr.Vedarathinam (PW-8). However it has reached the Court only on the next day i.e 30.10.2001 at 10.25 a.m. after the completion of trap. No reason is assigned by the prosecution for the delay in forwarding the First Information Report to the Court forthwith.

17. The oral statement of PW-2[Mr.Sudarsan] had been reduced to writing by Mr.Thambiraj and Ms.Bhavaneeswari DSP had received it and made endorsement on it that Mr.Vedarathinam[PW8] will register the case and investigate. In view of this endorsement, authorising the Inspector, Mr.Vedarathinam to investigate, it may not be correct on the part of the defence to agitate that there is no authorisation to Mr.Vedarathinam (PW-8) to investigate the case. But, having authorised PW-8 [Mr.Vedarathinam] to investigate, from the evidence of PW-2 [Mr.Sudarsan], PW-3[Mr.Rajamani] and others, it is ample elucidated that DSP Ms.Bhavaneeswari was also present along with the trap team both on 29.10.2001 as well as 30.10.2001. While so, no reason could be seen why the prosecution has not examined her despite mentioning her name in the list of witnesses.

18. No doubt, it is the prerogative of the prosecution to adduce evidence of its choice. But, when witness who is of higher in rank, had participated in the trap proceedings, non-examination of that witness weakens the prosecution case. More particularly , when the other witnesses examined by the prosecution carry the tag of motivated or interested witnesses. In this case, PW-2 and PW-3 are the witnesses, who claim to have seen and heard the accused demanding bribe and receiving it. They both are decoy witnesses sent to assist the trap. Whereas one Mr.L.Mani. who is a chance witness admittedly present at the scene of trap, was not examined by the prosecution to substantiate their case. Likewise, PW-3 and PW-8 are the witnesses, who speak about recovery of tainted money from the appellant. The recovery of tainted money preceding the phenolphathlein test, omission to mention the denominations of the currencies recovered badly dents the prosecution case. On weighing the respective evidence, PW-2 is a person who had reason to have animosity towards the appellant for not accepting his request to join duty after a long absence. PW-8 being the trap laying officer, he is a witness interested in success of the trap. The very fact that he first made the accused to handle the tainted money and then conducted the phenolphthalien test of his hands by itself proves he had not conducted the trap properly. Further, his statement under Section 161 Cr.P.C admittedly recorded by PW-9 is not furnished to the defence thereby a valuable right for the defence to contradict the previous statement of the witness is denied.

19. According to PW-3, Mr.P.V.Rajamani who was serving as Statistic Officer in the Statistic Department, he was instructed by his Director to go over to the Vigilance Office at Adayar on 29.10.2001 noon. He went to the Vigilance Office at 2.15 pm and met the Inspector Mr.Vedarathinam (PW-8) and DSP Ms.Bhavaneeswari. He admits that he know whether any written request was received from the Vigilance Department to this Director to spare his service to be witness for the trap proceedings. He admits that his Director did not give him any written order to attend Vigilance Office. He had stayed at the Vigilance Office on 29.10.2001 night, since the trap's attempt on that day was failed. He had deposed that after staying at Vigilance Office over night, on 30.10.2001 he went with the defacto complainant to the Corporation office. In Ex.P-12 the search list prepared during the search of the accused residence at 9,Kandasami Koil Street, Kosapet, Chennai, PW-3[Mr.Rajamani] has signed as one of the witnesses for the search. From this exhibit, this Court finds that the search was completed at 11.15 hrs. which means on 30.10.2001. PW-3[Mr.Rajamani] has not attended his office. The failure of the prosecution to place before the Court document to show that PW-3 was officially called to be witness for the trap proceedings, renders his presence at the scene of trap and thereafter, doubtful.

20. The defence explanation for the possession of the tainted money is that, PW-2[Mr.Sundarsan], who is an unauthorised absentee for 198 days can be admitted into service only if he gets proper fitness certificate from the Medical Board. When this was pointed out to the defacto complainant, he got furiated. Fearing, he may not get favourable report from the Medical Board. Therefore, to avoid appearing before the medical board he had adopted the intimidating method by lodging false complaint of demand of bribe so as to put in fear the higher authorities. On 30.10.2001 he entrusted the tainted money into his pocket forcibly and called the trap team waiting outside his room.

21. Through PW-5 and PW-6, the defence had proved that if any sanitary worker absent beyond 59 days on medical ground he will be assigned duty by the Zonal office, only after referrence to medical board on getting fitness certificate. In this case, the defacto complainant had absent himself from duty for 198 days. Therefore, necessarily, he has to under go examination by medical board. The appellant cannot surpass the existing Rule and allow the defacto complainant to join duty on his own. Only the Zonal Office is competent to condone the absence of 198 days and permit PW-2[Mr.Sudarsan] to join duty.

22. Regarding the tainted money of Rs.2,000/- marked as M.O. 1 series, the prosecution has miserable failed to prove that the marked currencies were recovered from the appellant. It is the case of the prosecution that 2 five hundred rupees notes, 9 hundred rupees notes and 2 fifty rupees notes totally Rs.2,000/- was smeared with phenolphthalein and entrusted to PW-2 [Mr.Sudarsan] for the purpose of trap. It is the also the case of the prosecution that PW-2[Mr.Sudarsan] brought this money and gave it to the trap laying officer along with the complaint Ex.P-6 . While so, in the entrustment mahazar [Ex.P-7] and the recovery mahazar [Ex.P-9] the denomination and number of notes does not find place. Only 13 serial numbers are mentioned. To which denomination of currency these numbers belongs is not mentioned in these documents. At least the prosecutor should have made the witness who has identified M.O 1 series to co-relate the note numbers with its denomination, which the prosecutor has failed to do. This omission gains significance and fatal to the prosecution since, there is no evidence to show that the property has been forwarded to the Court along with Form 95. When the chief examination of PW-2 commenced on 24.11.2004, it was not completed on that day due to the request of the prosecutor to mark the material objects. On his request, the court has adjourned the case for continuation of PW-2's chief. M.O.1 series (Rs.2000/-) has surfaced before the Court only during the examination of PW-2 on 22.02.2005. From the date of seizure till the date of its marking, the whereabout of the material object M.O. 1 series not known.

23. For the reasons that prosecution case being bristles with mala fide and omissions as pointed above, the trial Court judgment convicting the accused without giving due consideration of these facts requires interference. Accordingly, the trial Court judgment is set aside.

24. In the result, Criminal Appeal No.198 of 2008 allowed. The conviction and sentence dated 31.02.2008 passed in C.C.No.28 of 2002 on the file of Ist Additional Sessions Judge, Chennai is hereby set aside. The fine amount paid, if any, shall be refunded to the appellant. The bail bond executed if any shall stand cancelled. The appellant is at liberty, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Ist Additional Sessions Judge, Chennai

2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-II Detachment,
Chennai-20.

3.ThePublic Prosecutor,
High Court, Chennai.

+1cc to Mr.K.Karthikeyan, Advocate Sr.NO.5938

sm:9.2.2018

judgment made in
Crl.A.No.198 of 2008