BAIL SLIP

That the Appellant/Accused namely 1.A.Venkatachalam(Accused No.2) S/o.Arumugam and 2)S.Chandrasekaran, (Accused No.1) aged 62 S/o.Sevarimuthu was directed to be released on bail as per order of this Court dated 10.11.2009 and 19/11/09 in MP.No 1/2009 in Crl.A.No.675/09 and MP.1/2009 in Crl.A.No.714/2009 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.01.2018	Pronounced on: 12.01.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos. 675 & 714 of 2009

1. A.Venkatachalam ... Appellant/Accused No.2 in Crl.A.No.675 of 2009
2. S.Chandrasekarn ... Appellant/Accused No.1 in Crl.A.No.715 of 2009

/versus/

State, rep. by The
Inspector of Police
Vigilance and Anti-corruption,
Trichy ... Respondent
(Cr.No.7/1998)
and Cr.No.9/1998 in both the appeals

PRAYER in Crl.A.Nos. 675 & 714 of 2009: Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, to set-aside the order of conviction dated 21.10.2009 passed in Special Case No.5 of 2000 on the file of the Special Court cum Chief Judicial Magistrate Court, Perambalur.

For Appellant in Crl.A.No.675 of 2009 : Mr. S.Kamadevan

For Appellant in Crl.A.No.714 of 2009 : Mr. P.Mani

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

JUDGMENT

These two appeals are directed against the judgment of conviction and sentence passed by the Special Court-cum-Chief Judicial Magistrate, Peramabalur in Special C.C.No.5/2000 dated 21.10.2009.

2. Based on the complaint (Ex.P.4) given by one Chinnappan on 16.10.2008, alleging that when he went to Taluk Office, Kunnam to get Death certificate of his wife Parvathi. The Record Clerk attached to Taluk Office, Kunnam received his application and the challan of Rs.5/- paid as fees for death certificate demanded Rs.60/- as bribe to issue the death certificate. He was not inclined to give bribe. So on 15.10.1998 he again went to the Taluk Office and met Chandrasekaran the Record Clerk, but Chandrasekaran had firmly told him, "unless you give bribe you will not get the death certificate."

3. The Inspector of Vigilance and Anti corruption had received the above complaint and recorded the First Information Report at 9.15am and arranged for two witnesses. After demonstrating to the witnesses and the de facto complainant about the trap proceedings, the entrustment mahazar Ex.P.6 has been prepared. The bribe money of Rs.60/-, 2 twenty rupees note and 2 ten rupees note were smeared with phenolphthalein and entrusted to Chinnappan (PW.2). The defacto complainant (PW.2) at about 1.30pm along with the accompanying witness Kanagasabai (PW.3) had gone to Kunnan Taluk Office. They were followed by trap team. When Chinnappan met Chandrasekar (A-1) he had demanded and obtained Rs.60/- from Chinnappan (PW.2) in the presence of Kanagasaba (PW.3). After receiving the tainted money, A-1 counted it and given it to Venkatachalam (A-2) a private individual. The said Venkatachalam had kept the money in his pocket.

4. After, receiving the pre-arranged signal, the trap team entered into the Taluk Office and apprehended Chandrasekaran (A1) and Venkatachalam (A2). The Phenolphthalein test conducted on the hands with sodium carbonate solution turned into it pink. Hence, they are enquired about the tainted money received from PW.2 Chinnappan. The Venkatachelam (A2) had produced the tainted money from his right side pant pocket after comparing the serial number found in the currency produced by A2 with that of the numbers noted in the entrustment mahazar, the trap laying officer had got satisfied himself that (A1) had received bribe of Rs.60/- from PW.2 and given it to A2, prepared seizure mahazar and recovery of tainted money. The said seizure mahazar

marked as Ex.P.11.

5. After completion of investigation final report filed against the A1 for offences under 7 r/w 13(d) and offence against A2 private individual for offence 12 r/w Section 11 of Prevention of Corruption Act 1988 and 109 r/w 13(2), 13(1) (d).

6. To Prove the charges, the prosecution has examined 9 witnesses, marked 18 Exhibits and 7 material objects. After appreciation of these evidence, the trial court has found A1 guilty for offence under section 7 & r/w 13(2) r/w 13(1)(d) and A2 guilty of offence 12 r/w section 11 of Prevention of Corruption Act,1988. Whereas acquitted A2 for the charge under Section 109 r/w 13(1)(d).

7. Aggrieved by the judgment the present appeals are preferred by A1 and A2 and taken up for consideration.

8. The first accused Chandrasekarn (A1) in his Criminal appeal 714 of 2009 had contended that the judgment of conviction under section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo four months rigorous imprisonment for offences 7 of Prevention of Corruption Act and to undergo 18 months rigorous imprisonment, to pay a fine of Rs.3,000/- in default to undergo six months rigorous imprisonment for offence under 13(2) r/w 13(1)(d) of Prevention of Corruption Act is illegal and contrary to law. The trial court had failed to appreciate the evidence of the prosecution properly. In the absence of adequate corroboration to the evidence of interested witness, the trial Court ought to have acquitted the appellant for failure of prosecution to prove the case beyond reasonable doubt.

9. The attendance register marked as Ex.P.10 proves that on 14.10.1998, the appellant was not at Taluk Office, Kunnam when demand of bribe from PW.2 is alleged. It is through the documentary evidence of Ex.P.10 first accused has established that he was sent to Taluk Office Peramabalur on deputation on 14.10.1998. The proved fact being so, the complaint of PW.2 which contains falsehood of demand of bribe has been relied and accepted by the Trial Court. The explanation given by the accused for receipt of Rs.60/- from the de facto complainant, in order to remunerate A2 who had been assisting the Official work due to shortage of staff in Taluk Office, has not given due consideration by the Trial Court. The Court below ought to have consider that the service of A2 was temporarily utilised to share the work load and for the service rendered by him a small remuneration is given to him. Since the amount is very trivial the exception under section 20 (3) of the Act ought to have been applied in this case and appellants should have been acquitted.

10. The second accused who is appellant in Crl.A.No.675 of 2009 convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/- in default four months Rigorous imprisonment for offence under section 12 r/w 7 of Prevention of Corruption Act would submit the trial court judgment is contrary to law weight of evidence and all probabilities of case. The trial court failed to see that the prosecution witnesses have given evidence that this appellant demanded bribe as reward or motive to discharge his official duties. The appellant being a private individual, there could not be any charge against him for offence under Prevention of Corruption Act. More so, when there is no evidence on behalf of the prosecution that this appellant demanded bribe from the de facto complainant or obtained any bribe from the de facto complainant, the conviction under Section 11 r/w 7 of the Prevention of Corruption Act is illegal and improper. Even according to the prosecution the money was demanded and received by A1 and given to A2. The appellant (A2) used to do some errant work for A1 in the Taluk Office. For the said service he used to be paid a paltry money. When there is no evidence to show that this appellant abetted a public servant to receive any gratification other than legal remuneration no charge could be lay against him.

11. Further, the learned counsel for the appellant would content that A2 received the money from A1 without any knowledge about the source of the money or nature of the money. When A2 had no knowledge about the previous demand of bribe by A1. Just by receiving the money given by A1 without knowing anything about the previous demand on 14.10.1998 or 05.10.1998, he cannot be charged for abetting. In any event, it is contended by the counsels for the appellants that the amount alleged to have been received as bribe being trivial amount and given to A2 for his service rendered by assisting A1 the Record Clerk, to search the record and to prepare Death certificate, no criminal prosecution shall lie in view of section 20 (3) of Prevention of Corruption Act,1988.

Point for determination

i). Whether Rs.60/- received from PW.2 by A1 and given to A2 is illegal gratification received by the appellants as reward or motive to issue death certificate.

ii). Whether A2 aided/assisted or conspired with A1 by way of abatement to demand and obtain illegal gratification?

12. The fact of the case as unravelled through witnesses for prosecution reveals PW.2 Chinnappan made an application for issuance of death certificate in the name of his wife Parvathi. The said application is marked as Ex.P2 and requisite fee of

Rs.5/- remitted in the bank is marked as Ex.P.3. There is an endorsement on Ex.P2 that “RI” (Revenue Inspector) by the Deputy Talisldar.

13. Thereafter, on 16.10.1998 based on the complaint Ex.P4 given by PW.2 the respondent police had recorded First Information Report in respect of the alleged demand of bribe Rs.60/- by A1 for issuance of death certificate of Parvathi wife of chinnappan who died on 06.11.1995. The entrustment mahazar prepared before trap proceedings is marked as Ex.P6. The recovery of Rs.60/- from A2 and phenolphthalein test conducted for presence of phenolphthalein in the hands of A2 is recorded under mahazar Ex.P.11.

14. Though A1 contends that on 14.10.1998 he was on other duty for which he relies upon Ex.P.10 Attendance Register, to establish he did not demand bribe from PW.2 on 14.10.1998, since A1 admits in its explanation given under section 314 of Cr.P.C the receipt of Rs.60/- from PW.2. The core issued being involved in this case whether Rs.60/- received by A1 and given to A2 is illegal gratification to attract section 7 and 13 (1) of Prevention of Corruption Act. Thus the short point to be answered is whether this money amounts illegal gratification or not. A1 admits that he used to engage A2 to assist him in his official work due to heavy work load. A2 is not paid any salary from the Government therefore he used to get some money from the persons who come to Taluk Office and give it to A2 as daily wage. This fact is known to Tahsildhar and Deputy Tahsildhar. The money recovered from A2 is one such money given by PW.2. A1 did not demand any money as bribe from PW.2 but it was voluntary given by PW.2 to A2.

15. The learned counsel for the first appellant would point the deposition of PW.5 Tahsildhar, who admits that A1 had A2 to assist him in the work and death certificate issued in the name of Parvathi has been prepared by A2. In the cross examination PW.5 admits that Government is not paying any salary to A2 he was engaged by A1 privately and paid by A1. The A1 is charged for the offence under section 7 and 13 of Prevention of Corruption Act,1988.

16. Whereas A2 is charged for the offence under section 12 and r/w 7 Prevention of Corruption Act section 12 of the Act reads as under:

> Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed

in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine,

17. The explanation of A1 per se is sufficient to hold that the money received by him is not a legal remuneration. It has been obtained by him to pay A2. It is an admitted fact that A2 had been engaged by A1 to assist in the Official work. Such delegation of work like preparing death certificates is illegal and amount to dereliction of duty which in fact a conduct unbecoming of an public servant. Unfortunately in this case the Tahsildar PW.5 who is the head of the Office himself admits that he had permitted A1 to have a private Assistant to prepare the documents and PW.5 had gone to the extent of identifying the writing in the death certificate is that of A2.

18. However, this court is unable to subscribe the finding of the Trial Court for the reason that Rs.60/- which has been obtained by A1 had not been retained by him but had been given to A2 in the presence of de facto complainant. The prosecution case projected through PW.2, PW.3 and PW.7 (TLO) is also to that effect. A1 admits acceptance of money but deny that he demanded that money as a bribe to issue death certificate. In the absence of proof that PW.2 met the first accused on 14.10.1998, the demand of Rs.60/- as a bribe on 14.10.1998 gets falsified. Though the de facto complainant claims that he met the accused on 15.10.1998 there is no evidence let in by the prosecution to substantiate this. On 16.10.1998 A1 himself admits that he has received Rs.60/- from PW.2 and gave it to A2 for the service rendered by him in preparing the death certificate of Parvathi. In the said circumstances taking note of the explanation given by first appellant, this court holds that A1 had out sourced his responsibility to A2 and for outsource he has taken money from PW.2. It is not legal remuneration but at the same time the trivial money could not be taken as illegal gratification also. As far as A2 is concerned he had no knowledge about the alleged demand by A1. What he has received is his remuneration for assisting A1 in preparing the death certificate of Parvathi. Had, prosecution proved that A1 received Rs.60/- as gratification with intention by corrupt or illegal means then A2 could be held liable for assisting him in getting the gratification, uniquely, the facts and explanation given by A1, this court finds mens rea to make unlawful gain through illegal gratification which is the ingredient of section 7 and 13 is absent. Though for dereliction of duty and for out sourcing third person to do his job is a matter for departmental action as against A1.

19. In the light of above facts and circumstances of the case, this court finds it is not a case fit for convicting A1 under Prevention of Corruption Act but fit case to be proceeded against him departmentally for engaging A2 a third person to do the job of Record Clerk. In such circumstance, this court finds that the judgment of trial court is liable to be set aside. When A1 who is charged for the substantial offence under section 7 is exonerated, A2 is also entitled for acquittal from the charge of abatement.

20. In the result, the Criminal Appeals are allowed. The judgment of conviction and sentence passed by Special Court cum Chief Judicial Magistrate Court, Perambalur. in C.C.No.5 of 2000 is hereby set-aside. The bail bond executed if any by the appellants shall stand cancelled. 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Inspector of Police
Vigilance and Anti-corruption,
Trichy.

2. The Additional Public Prosecutor, (Criminal Side)
High Court, Madras.

3. The Special Judge and Chief Judicial Magistrate
Perambalur

+1 cc to Mr.S.Kamadevan Advocate sr 2905

Criminal Appeal Nos. 675 & 714 of 2009

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