

BAIL SLIP

Appellant / Accused was released on bail as per the order dated 20/11/2009 in CrI Mp.No.1 of 2003 in CrI A.715 /2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.08.2017

Pronounced on: 05.09.2018

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.715 of 2009
and M.P.1 of 2009

L.Samraj

... Appellant

Vs

State by
Inspector of Police,
Vigilance and Anticorruption,
Krishnagiri.
Cr.No.10/AC/2006/TV

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records in C.C.No.3 of 2008 on the file of Special Judge Cum Chief Judicial Magistrate at Krishnagiri dated 05.11.2009 hear the appellant, set aside the judgment and allow this criminal appeal.

For Appellant : Mr.V.Krishnamoorthy
for Mr.G.Krishnakumar

For Respondent : Mr.R.Ravichandran
Govt.Advocate (CrI.side)

J U D G M E N T

This appeal has been preferred by the victim of crime challenging his conviction and sentence by the trial Court.

2. The case of the prosecution is that the appellant was working as Junior Assistant in the District Registrar Office, Krishnagiri, and looking after the seat of Registration of Sangam from 12.12.1994 to 27.12.2006. Whiles, on 29.11.2006, he demanded a sum of Rs.650/- as illegal gratification other than the legal remuneration from the defacto complainant Nagarajan to

consider his application for registering the association formed by him in the name of "Rajiv Gandhi Elaingnar Sangam" and the appellant again made his demand for illegal gratification of Rs.650/- on 20.12.2006 when the defacto complainant approached the appellant at his office. Again on 26.12.2006 when the defacto complainant approached the appellant with a request to reduce the amount, the appellant reduced his demand for illegal gratification from Rs.650/- to Rs.600/- inclusive of the registration fee of Rs.155/-. The appellant demanded the payment of illegal gratification other than the legal remuneration of Rs.445/- from the defacto complainant (PW1) as a motive or reward to consider his application for registration of his newly formed "Rajiv Gandhi Elaingnar Sangam".

3. In pursuance of the above said demand, on 27.12.2006 between 11:25 hrs. and 11:50 hrs., the appellant at his office, demanded and accepted a sum of Rs.600/- from PW1 (defacto complainant) inclusive of the registration fees of Rs.155/- in the presence of the accompanied official witness Mr.Balashanmugam (PW4), being illegal gratification other than the legal remuneration as a motive or reward to consider his application for registration of "Rajiv Gandhi Elaingnar Sangam" and thereby the appellant committed the offence punishable under Sections 7 and 13 (2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

4. In the course of the same transaction and in pursuance of the above said demand on 27.12.2006 between 11:25 hrs and 11:50 hrs in the office of the District Registrar, Krishnagiri, the appellant being a public servant by corrupt and illegal means and by abusing his official position as Junior Assistant in the office of the District Registrar, Krishnagiri obtained for himself the pecuniary advantage of the said amount of Rs.445/- as an amount of illegal gratification from the defacto complainant (PW1) as a motive or reward to consider his application for the registration of his newly formed "Rajiv Gandhi Elaingnar Sangam" and thereby the appellant committed the offence of criminal misconduct punishable under Sections 7 and 13 (2) r/w 13(1) (d) of the prevention of the corruption Act, 1988. In order to prove the case of the prosecution, on the side of the prosecution as many as 15 witnesses were examined, 28 documents were marked as exhibits and 7 materials objects were also marked.

5. After examining the prosecution witnesses, the learned Chief Judicial Magistrate, Krishnagiri, put the incriminating circumstances before the appellant and the appellant denied as false evidence and has not opted for any oral and documentary evidence. After hearing the arguments of the learned counsel on either side, the trial Court found the appellant guilty and

thereby the appellant was convicted and sentenced for the alleged offence punishable under Sections 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment for the commission of offence punishable under Section 7 of the Prevention of Corruption Act and also to undergo one year Rigorous imprisonment and to pay fine of Rs.1000 in default to undergo three months of Simple Imprisonment for the commission of offence punishable under Section 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

6. Feeling aggrieved with the conviction and sentence passed by the trial Judge, the appellant has preferred the present appeal before this Court.

7. The learned counsel for the appellant would submit that PW1 (defacto complainant) himself in his chief examination categorically admitted that a sum of Rs.150/- was demanded by the appellant herein as registration fees for registration of the Sangam, but on the other hand the respondent/police with malafide intention in order to foist a false case has put the phenolphthalein powder in the entire amount of Rs.600/- which vitiate the case of the prosecution. The learned trial Judge also failed to consider the said facts and instead of rejecting the case of the prosecution, the trial Court accepted the case of prosecution.

8. Further, he would submit that PW1 (defacto complainant) himself admitted that the appellant has not received any bribe amount of Rs.445/- before processing the registration of Sangam. There is no evidence on record that the appellant accepted any amount. He further submitted that it is well settled proposition of law that mere recovery of the amount alleged to have been used for trapping the appellant is not sufficient to prove the prosecution case when the (PW1) defacto complainant himself has not supported the case of the prosecution. Further it is well settled proposition of law that in any bribe trap case, the main ingredients of demand, acceptance and recovery has to be established by the prosecution beyond reasonable doubt. Further if any doubt arises, the benefit of doubt goes in favour of the accused person. Therefore in this case, the defacto complainant was examined before the Court as PW1, he himself would state that the appellant has not demanded Rs.445/- as bribe or illegal gratification. There is a major contradiction between PW4 and PW14 in so far as the presence of the other witness in the scene of occurrence. The trial Court has failed to consider this material contradiction and believed the case of the prosecution. Therefore once there

is material contradiction available from the evidence of the prosecution and also any doubt arisen, the benefit of doubt always would be extended to the accused. Therefore, in this case there is a material contradiction and also the defacto complainant himself not supported the case of the prosecution and the prosecution failed to establish the acceptance of the bribe. Under these circumstances the appellant is convicted and sentenced and therefore, the order passed by the trial Court has to be set aside.

9. The learned counsel for the appellant has placed reliance on the following decisions:

1. (2009) 3 Supreme Court cases (Cri) 92 (Ranvir Yadav Vs State of Bihar).
2. (2009) 4 Supreme Court Cases 200 (State of Punjab Vs Hari Singh and others).
3. Manu/SC/0809/2017 (Mukhtiar Singh (since deceased) through his L.R. Vs State of Punjab).
4. (2009) 4 SCC 769 (Inspector of Customs, Akhnoor Vs Yashpal and another).
5. (2008) 2 MLJ (Crl) 292 (RM.Rajamanickam and others Vs State by Superintendent of Police, SPE/CBI/ACB/Chennai).
6. (2008) 3 SCC (Crl) 500 (Latu Mahto and another Vs State of Bihar).
7. (2010) 3 MLJ (Crl) 182 (P.Meganathan Vs State of Tamil Nadu rep. by Inspector of Police, Vigilance and Anti Corruption Department, Chennai).
8. (2011) 1 MLJ (Crl) 348 (S.Venkatappa Chetty Vs State rep.by Inspector of Police, Vigilance and Anti Corruption, Salem).
9. 2015 Crl.Law Journal 1715 (C.Sukumaran Vs State of Kerala).
10. (2014) 2 MLJ (Crl) 358 (SC) (B.Jayaraj Vs State of Andhra Pradesh).
11. (2009) 6 SCC 583 (Shaikh Maqsood Vs State of Maharashtra)

10. There is no quarrel with regard to the proposition of law laid down by the Apex Court and this Court. As per the cited decisions, demand, acceptance and recovery ought to be proved. In this case from the evidence of PW1 acceptance has not been proved therefore it vitiates the case of the prosecution. Accordingly, he prayed for allowing this appeal.

11. The learned Government Advocate (Crl.Side) would submit that on the basis of the complaint given by PW1 (defacto complainant), the Deputy Superintendent of Police, Vigilance and

Anti Corruption, Krishnagiri, instructed the Trap Laying Officer regarding the complaint made by the defacto complainant. Subsequently the Trap Laying Officer has taken the complaint from the defacto complainant and he arranged for Trap Laying proceedings and also he summoned the two independent witnesses and demonstrated pre Trap proceedings in the presence of independent witnesses and also explained how the Trap has to be proceeded in the presence of two independent witnesses. Subsequently after completing the pre Trap demonstrating proceedings PW1 (defacto complainant) went along with PW4 to the office of the appellant. There the appellant demanded money from PW1 and PW1 also gave bribe to the appellant. The appellant also received the demanded money in the presence of PW4. After acceptance of bribe by the accused, PW1 came out of the office of the appellant and showed pre arranged signal. Therefore the Trap Laying Team went to the office of the appellant along with PW1 and PW4 where PW1 (defacto complainant) had identified the appellant and thereafter conducted the phenolphthalein test on the appellant and recovered the amount of Rs.445/- from the appellant. Therefore, PW1 has supported the case of the prosecution and has narrated everything during the chief examination. PW4 who is the official witness who accompanied with PW1 has narrated the entire facts. Therefore from the evidence of PW1 the demand of bribe was proved and from the evidence of PW4 acceptance of money was established and from the evidence of PW4, Trap Laying officer and other material objects along with the documentary evidence established recovery also. Therefore, the prosecution has established the case beyond reasonable doubt and the ingredients of demand, acceptance and also recovery. Therefore the contradiction pointed out by the learned counsel for the appellant is not a major contradiction and the minor contradiction will not affect the case of the prosecution, since based on the complaint given by PW1 (defacto complainant) Trap Laying Officer arranged for Trap that was carried out successfully then the evidence of prosecution has established the demand, acceptance and recovery. Therefore the trial Court has appreciated the entire factual material of the case and also the oral and documentary evidence produced on the side of the prosecution and hence there is no merit in the appeal and it has to be dismissed.

12. Heard the rival submissions made on either side and perused the materials available on record.

13. It is the case of the prosecution that the appellant while working as a Junior Assistant in the office of the District Registrar Office, Krishnagiri from 12.12.1994 to 20.07.2006 having demanded and accepted Rs.600/- including the registration fee of Rs.155/- from PW1 for processing the application for the registration of "Rajiv Gandhi Elaingnar Sangam", out of Rs.600/- the appellant received Rs.445/- as

illegal gratification and Rs.155/- as Registration fees from PW1 (defacto complainant). Pursuant to the complaint given by PW1 to the respondent police on 27.12.2006 a trap was laid on the same day and the appellant herein was arrested on 27.12.2006 and let out on the same day. After completing the investigation charge sheet was lodged against the appellant herein under Section 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 before the Special Judge/Chief Judicial Magistrate, Krishnagiri. The learned Special Judge/Chief Judicial Magistrate, Krishnagiri after taking the case on file in C.C.No.3 of 2008, served copies to the appellant and also questioned the appellant. The appellant denied the allegations and therefore charges was framed, since the appellant denied the charge and put on trial. After trial, the appellant was convicted for the commission of offence under Sections 7 and 13 (1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

14. Though the trial Court has considered all the facts, the appellant prays that the findings of the trial Court has to be re-appreciated. According to the appellant, the trial Court has not properly considered the evidence and has to come to the independent conclusion and convicted the appellant under the offence as stated supra.

15. PW1 (defacto complainant) has spoken about the demand, acceptance and also regarding pre-trap proceedings and after the incident, he also identified the appellant before the Trap Laying Officer, PW4 who was summoned by the Trap Laying Officer and who have participated in the Trap Laying proceedings and he was also one of the member of the Trap Laying team and has spoken about the complaint given by PW1. Pre-Trap Laying Officer demonstrated proceedings and also accompanied with the PW1 to the office of the appellant and also spoken about the demand of the appellant and recovery by the Trap Laying Officer. PW13 who is the sanctioning authority has also spoken about the sanction accorded for taking proceedings against the appellant. PW14 is the Deputy Superintendent of Police, Vigilance and Anti Corruption Act who received the complaint from the defacto complainant and registered the case and arranged for Trap against the appellant. After that, he arranged for pre-trap proceedings and also summoned two witnesses PW1 and PW4 and after completing the pre Trap Laying Proceedings, PW1 went along with PW4 to the office of the appellant and handed over Rs.600/- to the appellant. after handing over the money to the appellant as already instructed by the Trap Laying Officer, PW1 came out of the office and showed the pre arranged signal and after noting the pre arranged signal the Trap Laying Team proceeded to the office of the appellant where PW1 identified the appellant in the presence of PW4 to the Trap Laying Team and then as instructed by the Trap Laying Officer, he left the office and

later on he gave statement.

16. The evidence of PW4 clearly shows that he was working as Assistant in the office of the Taluk Office, Krishnagiri, and as directed by his Superior Officer he went to the office of the PW14. The Trap Laying Officer introduced the defacto complainant (PW1) to him and after that he explained about the complaint given by PW1 and also demonstrated pre Trap Laying Proceedings. After completion of the demonstration proceedings he went along with PW1 to the office of the appellant where the appellant demanded money from PW1. In the presence of him, the appellant demanded bribe money from PW1 and PW1 handed over the money to the appellant and the appellant received the money and paid Rs.155/- as registration charges and kept remaining Rs.445/- in his table drawer, immediately he and PW1 came out of the office and PW1 showed the pre arranged signal to the Trap Laying Team and the Trap Laying Team headed by Deputy Superintendent of Police approached PW1 & PW4 enquired about the incident and then proceeded to the seat of the appellant in the appellant office and after identifying the appellant the Trap Laying Officer introduced himself before the appellant and they also conducted the Phenolphthalein test on the accused and it was proved. Since after completing the Phenolphthalein test they recovered the money from the appellant and they also prepared the mahazar and thereafter recovery mahazar was also prepared for the sample and also they got signature from PW4. After completion of the formalities, the money was sent to the Court and at the request of the Court, the investigating officer sent the material object to Forensic Lab and the report received was marked as Ex.P22. From the evidence of PW1, PW2, PW4, PW14 proved the case of the prosecution that the appellant demanded money from PW1. Then from the evidence of PW4 and PW14 the prosecution proves that the appellant accepted the bribe money and from the evidence of PW4 and PW14 the prosecution established the recovery of money from the appellant. Therefore the prosecution has proved its case beyond reasonable doubt that the appellant demanded money from PW1 for processing the registration of society namely, "Rajiv Gandhi Elaingnar Sangam". The Trap Laying evidence shows that he accepted the money and also the same was recovered by the officer from the appellant. The Chief Judicial Magistrate/Special Judge has appreciated the evidence and the appellant was found guilty. Mere contention raised by the learned counsel for the appellant is that the PW1 (defacto complainant) himself has not supported the case of the prosecution that the appellant did not demand the money when the defacto complainant approached the appellant on 27.12.2006 the appellant asked only the registration fee. He also paid only the registration fee of Rs.155/- not Rs.600/-. After paying Rs.155/- then only PW1 voluntarily kept Rs.455/- on the table of the appellant. At that time immediately the Trap Laying Officer came

and took the money and therefore when the defacto complainant himself is not supporting the case of the prosecution, there is doubt and also there is material contradiction from the evidence between PW4 and PW14. This fact has not been considered by the trial Court. In this regard this Court carefully perused the complaint given by the defacto complainant (PW1) before PW14 Deputy Superintendent of Police, Vigilance Anti Corruption Act and he has not denied the complaint that he has not stated that he has given the complaint. Therefore it is only from the first instant when he gave the complaint the appellant demanded money, even before PW4 during the pre trap demonstration PW1 accepted regarding the complaint given before Vigilance and Anti Corruption. The evidence of PW4 who accompanied PW1 to the office of the appellant and the appellant demanded money from defacto complainant (PW1) then only PW1 gave Rs.600/- to the appellant, the appellant after receiving Rs.600/- he paid Rs.155/- for registration fee and the remaining amount of Rs.445/- was kept by him in his table drawer. Thereafter PW1 and PW4 came out of the office and showed the pre-arranged signal to the Trap Laying Team. When the Trap Laying Officer went along with PW1 to the seat of the appellant where PW1 identified the appellant and Phenolphthalein test was conducted on the appellant, the amount was recovered from the appellant. Therefore from the evidence of PW4, it is proved that the demand, acceptance and recovery was made in his presence and there is no reason to discard the evidence of PW4. When the defacto complainant gave the complaint before the Superintendent of Police, Vigilance and Anti Corruption and he has not denied the complaint given before PW14 and later on, he cannot say that he has not demanded the money. Even the defacto complainant while giving the statement before the Investigating officer he has not stated anything about it only during the trial in order to safeguard the appellant he has turned hostile. The portion of the evidence need not be looked into. Therefore it appears that from the complaint given by PW1 and also participated in the Trap Laying proceedings and also made the statement and subsequently during the examination in the Court he turned hostile and PW4 has clearly narrated the entire facts and PW14 corroborated the same, the case of prosecution is proved. Even PW1 (defacto complainant) has supported the first part of the demand and made the complaint only on the second part of demand, he turned hostile. Whereas the evidence of PW4 proved the second part of demand made on 27.12.2006. Therefore, the entire material evidence goes to show that the prosecution proved the demand, acceptance and recovery from the appellant. Therefore under these circumstances, no credence can be given to the evidence of PW1 regarding Rs.445/- kept on the table of the appellant is not acceptable, when the independent witness PW4 clearly states after demanding PW1 gave money when PW1 disputed making complaint before PW14 and also pre Trap Laying

proceedings and also he went to the office on the date he paid the amount but only the evidence is that whether he paid Rs.155/- or Rs.600/- to the appellant is only to be noted. But from the evidence of PW4 it shows that the appellant demanded money after demanding money only PW1 gave Rs.600/- to the appellant. The appellant took Rs.155/- for registration fee and kept remaining Rs.445/- in his drawer. Therefore from the evidence of PW4 and other Phenolphthalein test conducted by the Trap Laying Officer and forensic lab report clearly shows that the appellant demanded money and also accepted money and a sum of Rs.445/- was also recovered. Hence, all the ingredients of demand, acceptance and recovery has been proved. There is no reason to discard the evidence of PW4.

17. In a trap case, demand, acceptance and recovery to be proved. In this case from the evidence of PW4 and other material evidence it is very clear from the complaint given by PW1 that the demand is proved and from the evidence of PW4 and from other material evidence it is proved that the prosecution proved that the appellant accepted the bribe money and from the evidence of PW4 and other Trap Laying Team and other material evidence shows that recovery was proved. Since demand, acceptance and recovery are proved the decisions referred to by the learned counsel for the appellant are not applicable to the present case on hand. Under these circumstances, the submission made by the learned counsel for the appellant is rejected.

18. This Court after re-appreciating the entire materials, oral and documentary evidence finds that the appellant is found guilty and prosecution has proved the case beyond reasonable doubt against the appellant. Therefore there is no merit in this appeal. Accordingly, this criminal appeal is dismissed. The order dated 05.11.2009 made in C.C.No.3 of 2008 on the file of the learned Special Judge Cum Chief Judicial Magistrate at Krishnagiri is hereby confirmed. The Trial Court is directed to secure the accused and make him to undergo the remaining period of punishment. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

dpq/tsh

To

1. The Special Judge-Cum-Chief Judicial Magistrate, Krishnagiri.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Vigilance and Anti corruption, Krishnagiri.

Note: At the time of pronouncing judgment, the learned counsel for the appellant submits that the appellant had died and filed a memo as follows:-

"It is humbly submitted that the appellant herein filed the present appeal against the conviction and sentence imposed by the trial Court in C.C.No.3 of 2008 dated 05.11.2009. The present appeal was argued and matter was reserved for judgment. It is informed that the appellant was died on 21.04.2018."

Recording the above said memo, the criminal appeal is dismissed as abated as against the appellant.

CrI.A.No.715 of 2009

VD (CO)
RMP (27/09/2018)



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