

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2018

PRONOUNCED ON : 13.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.548 of 2010

M.Viswanathan

...Appellant/Accused

Versus

State by:
Inspector of Police,
SPE/CBI/ACB
Chennai.

..Respondent/Complainant

Criminal Appeal is filed under Section 374(3) of Criminal Procedure Code, to set aside the Judgment dated 08.09.2010 made in C.C.No.1 of 2007 on the file of the learned Principal Special Judge for CBI cases, Chennai.

For Appellant - Mr.M.Babumuthu Meeran

For Respondent - Mr.K.Srinivasan,
Spl.PP(for CBI Cases)

J U D G M E N T

This appeal is against the judgment of conviction rendered by the Principal Special Judge for CBI Cases, Chennai in C.C.No.1 of 2007, dated 08.09.2010. The trial Court has found the

accused/appellant guilty of offence under Section 7 of Prevention of Corruption Act, 1988 and imposed sentence to undergo 1 year RI and to pay a fine of Rs.5,000/- in default to undergo 2 months RI. Further, the trial Court has also held that the appellant/accused guilty of offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and imposed sentence to undergo 2 years RI and fine of Rs.10,000/- in default to undergo RI for 3 months. The period of sentence ordered to run concurrently. The period of sentence if any already undergone by the accused was ordered to be set off.

2.The brief facts of the case as spoken by the prosecution witnesses are as follows:

S.Sivarajan[PW-3]) is the Proprietor of M/s Siva Hygienic Chemicals, Chennai. He was awarded contract for cleaning Platforms Nos.1 to 8 of Egmore Railway Station for a period of three years from July 2004 to June 2007. PW-2 [E.Madhavan Pillai] was working under PW-3[S.Sivarajan] as Supervisor. While so, the accused Viswanathan, a public servant working as Health Inspector at Egmore Railway Station, Southern Railway, Chennai was responsible of supervising the cleaning work executed by M/s Siva Hygienic Chemicals, Chennai. To clear the bills of M/s Siva Hygienic Chemicals, pursuant to the contract given by the Railways, the accused Viswanathan as Health Inspector

has to certify the bills. In such circumstances, PW-2[[E.Madhavan Pillai] had given complaint to CBI on 03.10.2006 alleging the accused/appellant herein demanding bribe to certify the bills. When he has informed the same to his employer[PW-3], he has instructed PW-2 not to give any bribe. When he submitted August Month Bill to the accused/Viswanathan during the first week of September 2006, the accused/Viswanathan demanded Rs.3,000/- as bribe to certify the same. Since his employer[PW-3] has instructed him not to give bribe, he again met the accused/appellant on 03.10.2006 at 11.30 hours and enquired about certifying the August Month Bill. The accused/Viswanathan has firmly told him that unless he give bribe of Rs.3,000/-, the bill will not be certified and he has instructed PW-2[E.Madhavan Pillai]that the money has to be paid by evening. This complaint Ex.P3 has been signed by PW-2[E.Madhavan Pillai] and bottom of it S.Sivarajan[PW-3] has also written that he know the fact and confirmed the demand of bribe by Viswanathan and signed.

3. Based on this complaint, which is marked as Ex.P3, two witnesses have been procured by the trap laying officer[T.P.Ananthakrishnan]PW-4. Those two witnesses viz., Nagarajan (not examined) and K.Chandramohan[PW-9] have witnessed the entrustment mahazar Ex.P4. The significance of the

phenolphthalein test has been demonstrated to the witnesses and the defacto complainant by the trap laying officer. The bribe money of Rs.3,000/- has been smeared with phenolphthalein and kept in the left side shirt pocket of the defacto complainant with specific instruction that he should give it to the accused, on his demand and once the money received by the accused Viswanathan, then he has come out and give signal by wiping his face with hand kerchief. The entrustment mahazar prepared at CBI office at Shastribhavan between 15.50 hours and 16.40 hours and thereafter, the defacto complainant and others have proceeded to Egmore Railway Station Platform No.3.

4. Further case of the prosecution is that when at about 5.30 p.m., E.Madhavan Pillai[PW-2] and S.Sivarajan [PW-3] went to the office of the accused at platform No.3 to meet the accused Viswanathan, the accused was not in his room. So as instructed by PW-4[T.P.Ananthakrishnan], the trap laying officer, S.Sivarajan[PW-3] contacted the accused over phone. The accused told him he is in Parrys's corner and within half an hour he will reach Egmore Railway Station. So, the entire trap team were waiting for the accused arrival. At 06.05 p.m., the accused came to his seat, PW-2 and PW-3 went to the accused and enquired about the August Month Bill. When the accused demanded the amount of Rs.3,000/-, S.Sivarajan[PW-3]

informed the accused that he has already given the money to E.Madhavan Pillai[PW-2]. The accused extended his hand towards E.Madhavan Pillai[PW-2] for money and PW-2[E.Madhavan Pillai] took out the tainted money from his left side shirt pocket and gave it to the accused. After receiving the pre-arranged signal, the trap team has apprehended the accused and conducted the phenolphthalein test of his hands and thereafter, recovered the money. The demand and acceptance of the money being spoken by PW-2 and PW-3 and recovery is spoken by PW-4 coupled with the entrustment mahazar prepared by him on the spot which is marked as Ex.P5. The chemical analysis report indicates the presence of phenolphthalein in the hand wash of the accused and left side shirt wash.

5. On behalf of the defence, 5 exhibits were marked, which are the letters sent through M/s Siva Hygienic Chemicals for sub-standard execution of cleaning work, imposed penalty of Rs.10,000/- for failure to comply the contractual obligations and also recovery of Rs.10,000/- from the bill to be paid.

6. The learned counsel appearing for the appellant would submit that the trial Court judgment is erroneous and liable to be set aside, since the trial Court has not appreciated the evidence let in by

the accused to prove the motive for giving a false complaint by S.Sivarajan(PW-3). The inconsistency regarding time of complaint, place of preparation of the complaint and contradiction between the prosecution witnesses regarding sequence of events in registering the complaint, preparing entrustment mahazar has not been given any consideration by the trial Court.

7. Further, the learned counsel appearing for the appellant contended that falsity of the prosecution case regarding recovery of tainted money is exposed by the contradiction among the witnesses. While the trap laying officer had deposed that the tainted money was recovered from the right side shirt pocket of the accused. Whereas, PW-2[E.Madhavan Pillai] and PW-3[S.Sivarajan] had deposed that the accused received the tainted money and kept in his left side shirt pocket. The chemical analysis report indicates that left side shirt pocket wash was tested for the presence of phenolphthalein. Further, PW-2 [E.Madhavan Pillai] had deposed that after entering the office of the accused, the trap laying officer has held both the hands of the accused, after conducting body search, phenolphthalein test was conducted. This raises doubt that presence of phenolphthalein in the hands of the accused may be due to conduct of PW-4's hand.

8. Per contra, the learned Special Public Prosecutor for CBI Cases submitted that the theory of motive propounded by the accused is irrelevant and insignificant, in the light to the proven fact of recovery of tainted money from the possession of the accused. Apart from PW-2[E.Madhavan Pillai] the defacto complainant, PW-9 [K.Chandra Mohan] independent witness has also deposed about the recovery of tainted money from the accused. Therefore, minor discrepancies, which is inevitable in any case which is natural and true cannot be a reason to doubt the case of the prosecution.

9. Point for consideration:-

Whether the evidence of PW-2, PW-3, PW-4 and PW-9 proves the demand and acceptance of illegal gratification by the accused?

10. As per the case of the prosecution, PW-3 [S.Sivarajan] is the contractor and PW-2[E.Madhavan Pillai] is the staff working under PW-3[S.Sivarajan]. The demand of bribe was made to both PW-2 and PW-3. The complaint is given in writing by PW-2[E.Madhavan Pillai]. However, in the bottom of the complaint Ex.P3, PW-3[S.Sivarajan] has also signed. It is the case of the prosecution that both PW-2 and PW-3

came to CBI Office and gave the complaint.

11. PW-2[E.Madhavan Pillai] has deposed that on 03.10.2006, he came to Egmore Railway Station and met the accused at 11.30 a.m., When he enquired the accused about the bill, the accused told him that if he give Rs.3000/- as bribe by evening, he will pass the bill. So, he informed PW-3[S.Sivarajan] about the demand the bill. So, he informed PW-3[S.Sivarajan] about the demand, PW-3[S.Sivarajan] came to platform No.3, Egmore Railway Station. PW-3[S.Sivarajan] contacted the accused over phone and decided to lodge complaint against the accused for demanding illegal gratification to pass the Bill.

12. At CBI office they both (PW-2 and PW-3) met Inspector T.P.Ananthakrishnan, who told them to give complaint in writing. PW-2[E.Madhavan Pillai] wrote the complaint, PW-3[S.Sivarajan] also signed in it. In the cross examination, PW-2[E.Madhavan Pillai] states that the complaint was written at Egmore Railway Station and thereafter, they went to CBI office and PW-3[S.Sivarajan] reached CBI office at 2.00 p.m., and met Inspector T.P.Ananthakrishnan[PW-4]. While PW-3[S.Sivarajan] in his evidence says that he and PW-2[E.Madhavan Pillai] went to CBI office on 03.10.2006 at 03.00

p.m., to give complaint first met the Superintendent of Police, Mr.Alexander Roy and told him about amount due to him under Ex.P2 and demand of bribe by the accused to pass the bill. Mr. Alexander Roy, Superintendent of Police, introduced him to T.P.Ananthakrishnan, Inspector and he formed the trap team.

13. PW-4 [Mr.T.P.Ananthakrishnan]in his evidence had deposed that at 14.05 hours (02.05p.m.) Shri.Venkatraman, the then SP/CBI/ACB, Chennai called him to his Chamber and introduced Mr.Sivarajan[PW-2] and Sri.Madhavan Pillai[PW-2] and handed over the written complaint at 03.10.2006 marked as Ex.P3. Thereafter, he started verifying the genuineness of the complaint, also arranged for two independent witnesses. One of the independent witness Mr.K.Chandra Mohan examined as PW-9 in the cross examination, he has stated that on 03.10.2006 at around 11'0 clock in the morning he received intimation from his H.R.Department to go to CBI office, accordingly, he went to CBI office at about 3.45 p.m. Thus, regarding the place of writing the complaint Ex.P3, whether at Egmore Railway Station or at CBI office there is contradiction. Whether PW-2 and PW-3 met Mr.Alexander Roy or Venkatraman before meeting the trap laying officer Mr.T.P.Ananthakrishnan[PW-4], there is contradiction. At what time, PW-2 and PW-3 met PW-4 (TLO). Whether at 14.05 hours

as deposed by PW-4 or at 03.00 p.m. as deposed by PW-3. In any event, when the thought of giving complaint against the accused was conceived by PW-3[S.Sivarajan] only after PW-2[E.Madhavan Pillai] met the accused on 03.10.2006 at 11.30 a.m., when he demanded Rs.3,000/- to pass the bill and after PW-3[S.Sivarajan] came to Egmore Railway Station and contacted the accused over phone how come the Trap laying officer PW-4[T.P.Ananthakrishnan] could have requested H.R. Department of PW-9[K.Chandra Mohan] at 11.00 a.m., itself to send him to be a witness in a case, upon complaint likely to given by PW-2[E.Madhavan Pillai] on behalf of PW-3[S.Sivarajan] at 03.00 p.m. This glaring unexplained contradiction adding to the fact that PW-4[T.P.Ananthakrishnan] has deposed that the tainted money was taken out by the accused from his right side shirt pocket which is not so as per the evidence of PW-3[S.Sivarajan] and PW-9[K.Chandra Mohan], widens the doubt about prosecution version regarding the recovery.

14. In the said circumstances, the defence theory of motive to lodge false complaint by PW-3[S.Sivarajan] through PW-2[E.Madhavan Pillai] gains importance because admittedly and through Exs.D1 to D5, it is proved that due to the action taken by the accused/appellant, PW-3[S.Sivarajan] was black listed and was not

awarded contract for platform Nos.9 to 11 though he was the lowest bidder. Further, penalty Rs.10,000/- has been recovered from his bill and the same has been communicated to PW-3 by the Chief Medical Superintendent vide letter dated 07.09.2006 marked as Ex.D-5. The complaint of illegal gratification alleged to have made during first week of September later, specifically stated as 04.09.2006 and complaint dated 03.10.2006 after a month lends credence to the defence theory of motive behind the complaint. While PW-2 and PW-3 are found to have ill-will towards the accused, the other prosecution evidence must be impeccable so as to hold the accused demanded and obtained illegal gratification. Whereas in this case, the evidence of PW-4[T.P.Ananthakrishnan] trap laying office demolishes the prosecution case in respect of the time of receipt of complaint, preliminary enquiry about the time of his request to HR Department of PW-9 and place of recovery of tainted money.

15. With so many lacuna in the prosecution evidence and the explanation of the accused, to the conclusion that the guilt of the accused not proved beyond doubt. The demand and acceptance of bribe money, which is *sine quo non* for presumption under Section 20 of the Prevention of Corruption Act, 1988 are not proved. Hence, the trial Court judgment is liable to be interfered.

16. In the result, **this Criminal Appeal is allowed.** The Judgment dated 08.09.2010 made in C.C.No.1 of 2007 on the file of the learned Principal Special Judge for CBI cases, Chennai is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant is cancelled. The appellant is at liberty unless his presence is required in connection with any other case.

13.03.2018

Index:yes/no

Internet:yes/no

To

1. The Principal Special Judge for CBI cases, Chennai.
- 2.The Inspector of Police, SPE/CBI/ACB, Chennai.
- 3.The Special Public Prosecutor for CBI Cases, High Court, Chennai.

WEB COPY

Dr.G.JAYACHANDRAN, J.

ari



Pre-Delivery Judgment made in
CRL.A.No.548 of 2010

WEB COPY

13.03.2018