Bail Slib

That the appellant/accused viz R.Sundararaju, S/o.Rangaswamy, was directed to be released on bail as per order of this Court dated 12.10.2007 and made in MP.1/07 in Crl.Rc.1554/07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2018
Pronounced on : 26.02.2018

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.601 of 2010

R.Sundararaju .. Appellant/Accused

/versus/

The Inspector of Police,
Prevention of Anti-Corruption and
Vigilance Department,
Coimbatore. .. Respondent/Complainant

Criminal Appeal filed under Section 397 and 401 of Criminal Procedure Code praying to set aside the order dated 13.09.2007 made in Spl.C.C.No.3 of 2004 on the file of Special Judge and Chief Judicial Magistrate, Coimbatore and the criminal appeal.

For Appellant :Mr.G.Nagarajan
For Respondent :Mr.P.Govindarajan, APP

J U D G M E N T

This appeal is directed against the judgment passed in Spl.C.C.No.3 of 2004, dated 13.09.2007 on the file of the Special Judge cum Chief Judicial Magistrate, Coimbatore.

2. The appellant, who was working as Special Officer, Co-operative Sub-Registrar, Valparai Co-operative Urban Bank, Valparai, Coimbatore District, was found guilty for demanding Rs.1,000/-from one R.Bepat, S/o Raphel for sanctioning loan of Rs.20,000/- and in continuation of his demand, he received Rs.1,000/- from R.Bepat on 07.06.2003 as illegal gratification to discharge his official act. Hence, he was sentenced to undergo 1 year RI and to pay a fine of Rs.1,000/- for the offence under Section 7 of Prevention of Corruption Act,1988 and 1 year RI and to pay a fine of Rs.1,000/-for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, in default of payment of fine to undergo 6 months

SI for each of the offence. The trial Court has ordered the period of sentence to run concurrently and to set off the period of imprisonment already undergone.

3. Aggrieved by the judgment of conviction, the appellant herein has approached this Court challenging the veracity of trial Court judgment.

4. The case of the prosecution in brief is that, the appellant herein was the Special Officer, Co-operative Sub-Registrar, Valparai Co-operative Urban Bank, Valparai, Coimbatore District from 05.07.2002 till his suspension subsequent to the trap proceedings held on 07.06.2003. One R.Bepat, a contractor has approached the Co-operative Bank for loan of Rs.20,000/- to improve his contract work. He became the member of the Society and made an application for loan on 04.05.2003. When he approached the accused/appellant, who was the Special Officer and the person responsible for sanctioning the loan, he demanded Rs.1,000/- from R.Bepat to sanction loan of Rs.20,000/-. On 02.06.2003 at 08.00 hours, R.Bepat met the accused at his residence and enquired about his loan, then, again he demanded Rs.1,000/- as bribe to sanction the loan. Since R.Bepat was not inclined to give the bribe to get the loan, he had given a complaint to the Coimbatore Detachment of Vigilance and Anti Corruption on 06.06.2003 at 03.30 p.m. The complaint was taken for investigation and on the next day, trap was organised by the Inspector of Police Mr.Ramachandran [PW-8].

5. The accused demanded and obtained Rs.1,000/- from R.Bepat, which was recovered from him soon after the receipt of the money by the trap laying officer. Since the money recovered from the accused tallied with the number noted in the entrustment mahazar and phenolphthalein test also proved to be positive, the accused was arrested. After completion of the investigation, the respondent has filed final report. Based on the final report, the trial Court has framed charges against the accused/appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

6. To prove the charges, the prosecution has examined 9 witnesses and marked 14 exhibits and 7 Mos. On the side of the defence, 2 witnesses were examined and 2 exhibits were marked. The trial Court after considering the rival submissions and scrutiny of the documents and occular evidence had accepted the case of the prosecution and found the accused guilty of charges and sentenced him as mentioned above.

7. The prosecution witnesses viz., PW-2[Mr.R.Bepat] and PW-3[Mr.Annamalai] had deposed about the receipt of tainted money by the accused on 07.06.2003 at the guest house in the ground floor of Co-operative Bank. The presence of phenolphthalein which came in contact while the accused

handling the tainted money has been spoken by scientific expert Mr.Nandakumar [PW-7] and his report is marked as Ex.P8. Relying upon the complaint [Ex.P2] given by PW-2[Mr.R.Bepat] and the evidence of PW-2 [Mr.R.Bepat], PW-3[Mr.Annamalai] and PW-7[Mr.Nandakumar], the prosecution had contended that the demand and acceptance of illegal gratification is proved through impeccable evidence and the defence has failed to rebut the presumption.

8. Whereas the accused has contended that the entire complaint and trap episode is due to the instigation of one G.Sugunarani, Assistant Manager of the Bank against whom the accused/appellant had taken departmental action and suspended her for misappropriation of fund. PW-2[Mr.R.Bepat] who is the neighbour to G.Sugunarani and known to her family for 20 years, had fall in to the hands of G.Sugunarani and had given a false complaint as if the accused/appellant has demanded bribe of Rs.1,000/-. In fact, PW-2 [Mr.R.Bepat] had borrowed money from the appellant and had executed a pro-note Ex.D2. Under the guise of discharging, the debt arose under the said pro-note, the tainted money was given to the accused. Immediately after the trap proceedings, the defacto complainant[PW-2] himself has written a letter to the Deputy Superintendent of Police, Vigilance and Anti Corruption, Coimbatore marking copy to the Joint Registrar, Co-operative enclosing a copy of the pro-note. The receipt of the said letter with pro-note admitted by PW-1, who accorded sanction to prosecute. Though the sanctioning authority had received these documents even before according sanction, he had not applied his mind or enquired about this letter with the defacto complainant or the investigating agency. Due to the non application of mind, sanction was accorded to prosecute him. Since the recovery of tainted money from him is not towards illegal gratification, he cannot be held liable for the offence charges against him.

9. The appellant herein challenges the finding of the trial Court on the ground that the trial Court has miserably failed to consider the contradiction between the sanctioning authority PW-1 and the investigation officer [PW-9] in respect of Exs.D1 and D2. While PW-1[Mr.K.G.Madhavan] had deposed that the letter from PW-2[Mr.R.Bepat] was received by him on 02.09.2003 much before the prosecution seeking sanction to prosecute the accused and discussed about the letter with the investigation officer, PW-9 [Mr.K.Mani], before according sanction contrarily the investigating officer has denied his knowledge about Ex.D1 or discussion with PW-1 regarding Ex.D1.

10. Had the trial Court considered this contradiction and the motive behind the complaint, it ought not have to come to the erroneous conclusion. The pro-note executed by PW-2 [Mr.R.Bepat] has been spoken by the attesting witness Mr.Pitchaiah(DW2). Though PW-2 [Mr.R.Bepat] had denied any money transaction with the accused, his own brother, who had

been examined as PW-4[Mr.Johny] admits that he and PW-2 [Mr.R.Bepat] used to borrow the money from the accused in case of emergency. PW-4[Mr.Johny] had further spoken out the truth, that only at the instigation of G.Sugunarani, the false complaint was given by PW-2 [Mr.R.Bepat]. Though the prosecution has declared PW-4[Mr.Johny] as hostile witness, the trial Court ought to have taken into consideration that his evidence is probable and possible. When already one of the member in the defacto complainant's family had availed loan, there cannot be second loan to the same family.

11. Further, the loan application Ex.P5 alleged to have given by PW-2 on 04.05.2003 compared with Ex.P14 the photocopy of the application will reveal that the said application cannot be processed for want of particulars. While so, when admittedly the application of PW-2[Mr.R.Bepat] seeking loan had never been processed by the Secretary, who is in-charge of scrutinizing and recommending the loan, the accused, who is the Special Officer, cannot sanction the loan. This aspect elucidated through the prosecution witness has not been given due consideration by the trial Court. For the said reason, the learned counsel appearing for the appellant would seek interference of this Court to set aside the trial Court judgment and set the appellant at liberty.

12. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that there is no point worth interfering the judgment of the trial Court, which is rendered after considering the law and facts involved in this case. The material placed by the investigating officer had been thoroughly gone through by PW-1[Mr.K.G.Madhavan] who is the person competent to remove the appellant from his service. PW-1 [Mr.K.G.Madhavan] after perusing the records and applying his mind had accorded sanction. The alleged so called letter sent by PW-2[Mr.R.Bepat] and marked as Ex.D1 is denied by PW-2[Mr.R.Bepat]. Therefore, there is no necessity to give any consideration about this letter. When PW-2 [Mr.R.Bepat], PW-3[Mr.Annamalai] and PW-8[Mr.Ramachandran] had cogently spoken about the demand and acceptance of the tainted money by the accused, it is the burden of the accused to rebut the presumption that the money was not received by him as illegal gratification. In order to discharge the said burden, the accused has attempted to introduce Ex.D1 and Ex.D2. These two documents are denied by the defacto complainant. While both the documents are witnessed by Mr.Pitchaiah [DW-2] and Mr.Inbanathan, it is suggested to DW1 that he is the close associate with the accused and to help the accused, these documents were created with his connivance.

13. It is further contended by the learned Additional Public Prosecutor appearing for the respondent that the action against G.Sugunarani, Assistant Manager of the Bank is nothing to do with this case, which has been emanated due to demand and illegal gratification by the accused to sanction the loan to PW-2 [Mr.R.Bepat]. While the prosecution has proved the

case of demand and receipt of illegal gratification under Section 20 of Prevention of Corruption Act, 1988, the guilt of the accused has to be presumed.

14. Point for consideration:

Whether the trial Court had properly appreciated the evidence relied by the prosecution and the defence while holding the accused guilty of demand and receipt of illegal gratification?

15. Ex.P5 (series) is the file consisting of loan application form, pro-note and indemnity bond given by PW-2 [Mr.R.Bepat]. A scrutiny of these documents reveal that it does not contain all the details sought in the form. Many of the columns which are very relevant and essential, are found unfilled. The date against the signature of the applicant namely, PW-2[Mr.R.Bepat] is shown as 04.05.2003. Whereas, on the first page of the loan application, the seal of Urban Bank Valparai with date as 03.05.2003 with initial is found. It is also seen from the file of PW-2[Mr.R.Bepat] that he paid Rs.75/- for purchase of the application form. The receipt is dated 03.05.2003. PW-2 [Mr.R.Bepat] in his deposition has stated that on 03.05.2003, he paid Rs.200/- and became member of the society paid Rs.75/- to get the loan application form. Thereafter, he filled up the application and submitted it along with the surety bond obtained from his brother Mr.Johny and friend Mr.Kunjubaba. Neither the pro-note nor indemnity bond nor surety bond is filled up. It contains only the signature.

16. This Court finds only signatures of the respective persons in all these documents without filling up the blanks. Thus, from the perusal of the file marked as Ex.P5(series), one thing is clear to the Court that what has been submitted by PW-2[Mr.R.Bepat] as loan application was incomplete application and the same has not been processed by the Secretary of the Society.

17. PW-2[Mr.R.Bepat] admits that his application is an incomplete one and not reached the stage of recommendation. He also admits that his application was not recommended by the Secretary. The process of sanctioning the loan is spoken by PW-5[Mr.Stanley]. He was in possession of Ex.P5 (series) consisting of loan application and other relevant documents of PW-2[Mr.R.Bepat]. According to him, the application was sold on 03.05.2003 to PW-2[Mr.R.Bepat]. He has submitted his application on 04.05.2003. Any application received will be placed before the Secretary, who will process the application and forward it to the Special Officer. In this case, the application had not been processed by the Secretary.

18. It is suggested to the witnesses during the cross examination that the loan application of PW-2[Mr.R.Bepat] was rejected by the Secretary, since the loan to the brother of PW-2 [Mr.R.Bepat] has already been sanctioned by the Society

and for a family only one member is entitled for the loan. It is also contended by the defence that the original application is presented by PW-2[Mr.R.Bepat] was rejected. What is placed before the Court is the planted document replacing the second and third sheet. The incomplete application gives raise to doubt that the defence theory is possible, when PW-5 [Mr.Stanley] admits that the application of PW-2[Mr.R.Bepat] received by him on 04.05.2003 and was in his custody till it was recovered by the Vigilance Police in the course of trap proceedings. The submission of the accused that he had no opportunity to see the application form Ex.P5 (series), since the application given by PW-2[Mr.R.Bepat] has already been rejected gets fortified.

19. Though PW-2[Mr.R.Bepat] denies his knowledge about the suspension of G.Sugunarani by the accused/appellant for misappropriation, he admits that he knows G.Sugunarani and her husband Mr.Jaganathan for 20 years and she is living next to his house. PW-9[Mr.K.Mani] who has seized the attendance register of the Co-operative Urban Bank Society, Valparai referring the attendance register marked as Ex.P11 admits that G.Sugunarani was placed under suspension on 03.05.2003. The prosecution witness say that earlier the society used to maintain the loan application register, but after computerisation, they have stopped maintaining the register. The Investigating Officer admits in his cross examination that he did not seize the entries found in the loan application register maintained in the computer.

20. These aspects cumulatively cause doubt about the prosecution case in respect of the manner in which the demand and acceptance of illegal gratification made by the accused to sanction the loan to PW-2[Mr.R.Bepat]. The accused has produced a letter Ex.D1 and pro-note Ex.D2 alleged to have signed by PW-2 [Mr.R.Bepat] both indicating that the complaint lodged against the appellant is a false complaint and it was lodged at the instigation of G.Sugunarani, suspended Assistant Manager of the Society. While PW-2[Mr.R.Bepat] denies the execution of the pro-note or letter addressed to PW-1 [Mr.K.G.Madhavan] and the Deputy Superintendent of Police (DV & AC), the receipt of Ex.D1 is admitted by PW-1 also. PW-4 [Mr.Johny] brother of PW-2[Mr.R.Bepat] admits the knowledge about the letter Ex.D1 written by PW-2[Mr.R.Bepat] and the loan transaction between PW-2[Mr.R.Bepat] and the accused person.

21. The discrepancies in the evidence of PW-2 [[Mr.R.Bepat]] and the evidence of PW-3[Mr.Annamalai], the witness who was asked to accompany PW-2[Mr.R.Bepat] and watch the transaction surfaces while scrutinization the evidence of PW-2[Mr.R.Bepat] and PW-3[Mr.Annamalai] accompany witness. This Court finds that both PW-2[Mr.R.Bepat] and PW-3 [Mr.Annamalai] had gone to the office of the accused at about 10.55 a.m. While PW-2 [Mr.R.Bepat]has gone inside the room of the appellant, PW-3[Mr.Annamalai] had stood out side the room.

Thereafter, both PW-2 [Mr.R.Bepat] and the accused together claimed down from the first floor and went to the guest house, where PW-2[Mr.R.Bepat] has given the money to the accused and the accused has received it. Neither PW-2[Mr.R.Bepat] who give the money nor PW-3[Mr.Annamalai] who saw the transaction had spoken anything about the demand made by the accused while receiving the money.

22. In the said circumstances, in the light of evidence let in by the defence through DW-1 and DW-2 and Exs.D1 and D2 besides the evidence of PW-4[Mr.Johny]brother of the defacto complainant would go to show that the money, which was recovered from the accused during the trap proceedings, is not proved to be illegal gratification. One of the strong reason to disbelieve the case of PW-2[Mr.R.Bepat] is that even according to him admittedly, 4 times his father had availed loan from the Society and his brother has also availed loan from the Society, just prior to the trap instance. There is no allegation of demand of bribe by the accused for sanctioning the loan during those instances. The allegation of demand and illegal gratification for sanctioning the loan has cropped up for the first time after the suspension of G.Sugunarani.

23. While perusing the loan application marked as Ex.P5 (series) and the loan application marked as Ex.P14 clearly establishes that the application is blank at most places, has not even been scrutinized by the Secretary and not been recommended by the Secretary to the Special Officer(accused) for sanctioning the loan. Per se is an incomplete application and further the defence has raise substantial doubt about the genuineness of the application found in the file marked as Ex.P5 (series).

24. For the above said reasons, this Court finds that the finding of the trial Court is not appropriate based on the evidence available on record. Hence, the conviction judgment of the trial Court is liable to be set aside.

25. In the result, this Criminal Appeal is allowed. The judgment of conviction dated 13.09.2007 made in Spl.C.C.No.3 of 2004 on the file of Special Judge and Chief Judicial Magistrate, Coimbatore is hereby set aside. Fine amount paid by the appellant shall be refunded to him. Bail bond if any executed by the appellant shall be cancelled. The appellant is at liberty unless is presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge and Chief Judicial Magistrate, Coimbatore.
2.The Inspector of Police, Prevention of Anti-Corruption and Vigilance Department,Coimbatore.
3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.G.NKagarajan, Advocate Sr.no.14460

VD(CO)
sm:26.3.2018

judgment made in
Crl.A.No.601 of 2010