Bail Slip

The Appellant/Accused viz., V.Pechi, S/o.Vel order was released on bail by an order of this court dated 25/10/2010 made in M.P.NO.1 of 2010 in Crl.A.NO.605/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.01.2018

Pronounced on :31.01.2018

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Criminal Appeal No.605 of 2010

V.Pechi .. Appellant/Accused

/versus/

State by Deputy Superintendent
of Police, Vigilance and Anti-Corruption,
Special Cell, Coimbatore.
(Crime No.32/2003/AC/CB) .. Respondent/Complainant

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code praying to set aside the conviction and sentence passed against the appellant/accused in the judgment dated 30.09.2010 and made in Spl.C.C.No.12/2004 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Coimbatore and acquit the appellant herein for the offences.

For Appellant :Mr. R.Rajasekaran

For Respondent :Mr.P.Govindarajan, APP

J U D G M E N T

Based on the complaint given by one Jaganathan on 18.12.2003 to the Inspector of Police, Vigilance and Anti-Corruption, Coimbatore, First Information Report was registered and thereafter, proceedings was initiated by the respondent-police, which culminated in recovery of tainted money of Rs.1,000/- from the possession of the appellant, Junior Engineer, Tamil Nadu Electricity Board, South Periyanayakanpalayam in-charge of Assistant Engineer, Narasimmanayakanpalayam on 19.12.2003. The trial Court framed charges under Sections 7 and 13(2) r/w 13(1)

(d) of the Prevention of Corruption Act, 1988 and tried the appellant.

2. To prove the charge prosecution have examined 12 witnesses and marked 16 exhibits and also 7 material objects. In defence, the appellant/accused has marked 2 exhibits. The trial Court has held the appellant guilty of offence under Section 7 and sentence him to undergo 3 years RI and to pay a fine of Rs.5,000/- in default to undergo 1 year SI and for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 to undergo 4 years RI and to pay a fine of Rs.5,000/- in default to undergo 1 year SI.

3. Aggrieved by the conviction and sentence, the present appeal is preferred on the ground that the trial Court has failed to consider the plausible explanation given by the accused/appellant for recovery of money from his possession. The tainted money was planted on the table of the appellant by the defacto complainant[PW-2], the trap laying officer directed the accused to handle the tainted money and thereafter, conducted phenolphthalein test. The trial Court has also failed to consider this fact while appreciating the evidence of PW-3 [Mr.Vasudevan] and arrived at an erroneous conclusion. The evidence of PW-2[Mr.Jaganathan] is a tutored one and it is contrary to the evidence of PW-3[Mr.Vasudevan], who claims himself as witness accompanying the defacto complainant and saw the appellant demand and acceptance of bribe. The uncorroborated version of PW-2[Mr.Jaganathan] ought not to have been relied upon by the trial Court. The sanction accorded by PW-1[Mr.V.Ragothaman] to prosecute the appellant bristles with non-application of mind. Therefore, the trial Court ought not to have taken cognizance of the offence against the appellant.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent-State submit that while the appellant herein was working as Junior Engineer, Tamil Nadu Electricity Board, Periyanayakanpalayam and in-charge of Narasimmanayakanpalayam Section Office, he demanded a sum of Rs.1,000/- from one Jaganathan[PW-2] on 18.12.2003, when the witness made applications for service connection to his business premises. When the applications were made, the appellant directed the defacto complainant to enclose ownership certificate issued by the Village Administrative Officer and to re-submit it with fees of Rs.6,910/- for 3 HB and fees of Rs.8,510/- for 4KVA connection along with bribe of Rs.1,000/- separately. Since Mr.Jaganathan [PW-2] was not ready to give bribe of Rs.1,000/-, he reported the matter to respondent-police, who in turn registered the complaint on 18.12.2003 at 04.00 p.m., and thereafter, laid a trap and caught the accused red handed when he received the tainted money of Rs.1,000/- from Mr.Jaganathan[Pw-2] on 19.12.2003 at 09.45 hours. The

phenolphthalein test conducted on the hands of the accused was found positive. The authority competent to remove the appellant being satisfied had accorded sanction to prosecute him. The trial Court, on cumulative assessment of the evidence let in by the prosecution, has found the appellant guilty. Therefore, there is no ground to interfere with the well considered judgment of the trial Court.

5. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent-State and also perused the materials on record.

6. Point for consideration is whether the explanation given by the accused/appellant regarding recovery of tainted money from his possession is plausible?

7. Ex.P2 is the application form given in the name of N.Duraisamy, S/o Narasimalu Naidu seeking 4KVA service connection for his small scale industry and Ex.P3 is the application given in the name of N.Duraisamy, S/o Narasimalu Naidu for 3 HP motor connection for his industry. PW-2 [Mr.Jaganathan], in his evidence, has deposed that on 18.12.2003, he went to Tamil Nadu Electricity Board office at Thoppampetti Division, Heppy Garden Colony and met the Assistant Engineer and gave the applications Exs.P2 and P3. The appellant, who was working as Assistant Engineer at that time, perused those applications and gave it back to him saying that a certificate from the Village Administrative Officer to show that the property belongs to N.Duraisamy, has to be enclosed. So, he went to the Village Administrative Office at Narasimanaikenpalayam and found that the Village Administrative Officer was on other duty and he will come back to his office only after two days. Therefore, he returned to the office of the Assistant Engineer, met the appellant and reported that the Village Administrative Officer was on other duty and he will come back to his office only after two days. Then, the appellant, after confirming with one Natarajan, Commercial Assistant reading metre is available in the office, told PW-2 [Mr.Jaganathan] that if he deposit the money, service connection could be given on his applications. PW-2 [Mr.Jaganathan] has enquired how much he should deposit, for which the appellant had told him that he should deposit Rs.15,400/- for both 3 HP service connection and 4KVA service connection besides he should also give a sum of Rs.1,000/- to him as bribe to process his applications. In Ex.P4, we find the word “to him” (jdf;fhf) is inserted distinctly.

8. On the same day, PW-2[Mr.Jaganathan] has gone to the Vigilance Office to register his complaint, which is marked as Ex.P4. On the date of trap i.e., on 19.12.2003 PW-2 [Mr.Jaganathan] has gone to Thoppampatti Tamil Nadu Electricity

Board office and met the appellant. On seeking the applications, he has informed PW-2 [Mr.Jaganathan] that he should pay Rs.750/- for making separate lighting line, which should be paid after Commercial Inspector inspect the premises and demanded bribe of Rs.1,000/- and received the same. After receiving the money, he put initial on the applications and directed him to submit the applications to Commercial Inspector.

9. The learned counsel appearing for the appellant pointing out the contradiction in the complaint and in the ocular evidence of PW-2[Mr.Jaganathan] submitted that it is improbable to fix Rs.6,910/- for 3 HP service connection and Rs.8,510/- for 4KVA service connection even without inspecting the premises. If the averment in the complaint as well as the chief examination of PW-2[Jaganathan] is correct, then on 19.12.2003 along with the applications the defacto complainant[PW-2] should have paid the deposit amount of Rs.15,420/-. Without inspection of the premises, deposit amount cannot be ascertained and if the deposit amount has already been ascertained, then the applications without paying deposit amount, cannot be acted upon by the appellant.

10. Further more, the learned counsel appearing for the appellant pointing out the inconsistent and self-contradiction of PW-2[Mr.Jaganathan] regarding the presence of Commercial Assistant, Mr.Natarajan, during the alleged demand at one incident and retracting himself saying when he met the appellant, there was no one else in the appellant's room, causes doubt about the prosecution case of demand and acceptance. Similarly, the learned counsel appearing for the appellant also pointed out the contradiction regarding the reason given by PW-2[Mr.Jaganathan], the defacto complainant and PW-11 [Mr.Vivekanandan] the trap laying officer, for not depositing Rs.15,420/- along with the applications expose the falsehood in the prosecution case.

11. The explanation given by PW-2 [Mr.Jaganathan] for not depositing Rs.15,420/- along the applications Exs.P2 and P3 is not corroborated by PW-11 [Mr.Vivekananthan] (trap laying officer). Further more, PW-10 [Mr.Selvaraj] has categorically stated that on 18.12.2003 at 1.30p.m., PW-2 [Mr.Jaganathan] was in his room and the appellant\Pechi informed PW-2 [Mr.Jaganathan] that he should pay Rs.15,420/- as deposit for these two applications and he did not demand any bribe.

12. On a cumulative assessment of the evidence, the specific case of the prosecution is that for entertaining two applications given by PW-2[Mr.Jaganathan] in the name of his father, the appellant has informed him that he should pay Rs.15,420/- towards deposit and he should produce prove of ownership along with the applications and also Rs.1,000/- as bribe. This demand accorded the complaint Ex.P4 as well as the

deposition of PW-2[Mr.Jaganathan] was first made on 18.12.2003. PW-10 [Mr.Selvaraj] had categorically deposed that the appellant never demanded any bribe but he only informed PW-2 [Mr.Jaganathan] about the amount which he has to deposit for service connection.

13. Admittedly, on the date of trap i.e., on 19.12.2003, the defacto complainant[PW-2] has not deposited any money, he has not enclosed the ownership certificate issued by the Village Administrative Officer and only submitted his applications Exs.P2 and P3 upon which the appellant has endorsed as 'CI' and initialled with date.

14. PW-3[Mr.Vasudevan] in his chief examination has deposed that after receiving the pre-arranged signal from PW-2 [Jaganathan], the trap team entered into the room of the accused and after disclosing their identity, the Inspector enquired the appellant whether he received any money from PW-2 [Mr.Jaganathan]. Immediately, the appellant has admitted and took out two five hundred rupees note from his shirt pocket and handed over to the trap team and thereafter, phenolphthalein test was conducted. So, no wonder the test proved positive. The explanation given by the accused by way of suggestion to the witness that the Inspector asked the accused to take out all the things in his pocket and place it on the table. The defacto complainant kept the tainted money in a cover beneath the file on the appellant's table, had been asked to be handled by the trap laying officer and thereafter, phenolphthalein test was conducted. PW-5[Mr.Natarajan], Commercial Inspector whose presence spoken by PW-2[Mr.Jaganathan] during the demand on 18.12.2003 and 19.12.2003 has deposed that the appellant gave the applications Exs.P2 and P3 on 19.12.2003, when he gave the applications, PW-2[Mr.Jaganathan]was present and yet another person was standing out side the room. This will reveal that PW-3 [Mr.Vasudevan] was not present when the money alleged to have demanded and received. He has denied the suggestion during the cross examination that the appellant demanded bribe from the defacto complainant[PW-2]. Thus, except the evidence of PW-2 [Mr.Jaganathan] there is no corroboration for either demand or acceptance of bribe. Even the recovery of tainted money from the possession of the appellant is highly doubtful, in view of the evidence given by PW-3[Mr.S.Vasudevan].

15. In fact, PW-3[Mr.S.Vasudevan] was not present inside the room when PW-2[Mr.Jaganathan] met the appellant and he was standing outside. Therefore, his evidence is of no value. Mere recovery of tainted money is not sufficient to hold the accused person guilty unless the demand and acceptance is proved. In this case, the alleged demand of bribe on 18.12.2003 is disproved through the evidence of PW-5[Mr.Natarajan]. The manner in which the tainted money had

been recovered cause doubt whether any money was obtained by the appellant or it was planted on the table of the appellant. In such a doubtful circumstances, it is unwise to convict the appellant solely based on the evidence of PW-2[Mr.Jaganathan] which carries self-contradiction on several material facts.

16. In the result, the Criminal Appeal is allowed. The conviction judgment of the trial Court viz., the Special Judge-cum-Chief Judicial Magistrate, Coimbatore dated 30.09.2010 made in Spl.C.C.No.12/2004 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 shall stand cancelled. The appellant is at liberty unless his presence is required in connection with any other case.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Special Judge-cum-Chief Judicial Magistrate, Coimbatore

2. The Deputy Superintendent of Police, Vigilance and Anti-Corruption,
Special Cell, Coimbatore.

3.The Public Prosecutor, High Court, Madras.

4.The Superintendent,
Central Prison,
Coimbatore.

+1cc to Mr. R.Rajasekaran, Advocate sr.no.7752

Criminal Appeal No.605 of 2010

gp(co)
nr 22/02/2018