Bail Slip

The appellant in Crl.A.330/06 viz P.Palanisamy (A-2) and the appellant in Crl.A.340/06 viz P.Thangavelu (A-1) were directed to be released on bail as per the orders of this court dated 17.04.2006 and made in i)Crl.M.P.No.2432/06 in Crl.A.No.330/06 and ii)Crl.MP.No.2485/06 in Crl.A.340/06 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.01.2018	Pronounced on: 10.01.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.A.Nos.330 & 340 of 2006

1. P.Palanisamy ... Appellant in Crl.A.No.330 of 2006
2. P.Thangavelu ... Appellant in Crl.A.No.340 of 2006

/versus/

State, rep. by The
Inspector of Police
Vigilance and Anti-corruption,
Salem. ... Respondent
in both the appeals

PRAYER in Crl.A.No.330 & 340 of 2006: Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, to set-aside the conviction and sentence passed in special C.C.No.1 of 2002, on the file of the Special Judge-cum-Chief Judicial Magistrate, Namakkal District by judgment dated 29.03.2006.

For Appellant in Crl.A.No.330 of 2006 : Mr.A.K.Kumarasamy, Senior Counsel for B.Vasudevan

For Appellant in Crl.A.No.340 of 2006 : Mr.A.K.Kumarasamy, Senior Counsel for S.Kaithamalaikumaran

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

JUDGMENT

These two Criminal Appeals arising out of the Judgment passed in Special C.C.No.1/2001 dated 29.03.2006 on the file of the Special Judge-cum-Chief Judicial Magistrate, Namakkal District.

2. The Trial Court has found that the appellants (A1 and A2) guilty of offences under section 7 of Prevention of Corruption Act, 1988, r/w 13(1)(d) and 13(2) for accepting bribe of Rs.50/- and Rs.10/- respectively for registering the settlement deed presented by one P.Thangavelu.

3. On appeal, this court found that there is no acceptable evidence for demand and acceptance of illegal gratification by A1 and A2 and reversed the finding of the Trial court and allowed the appeal vide its order dated 15.02.2012. However, the Hon'ble Supreme Court in the appeal preferred by the State has set-aside the order of the High court and remanded the matter for fresh disposal. Accordingly, the case has been taken up for fresh appraisal.

4. After notice to the parties, the learned counsel appearing on behalf of the appellants. The respondent represented that copies of the typed set is available with them and consented to make their submissions with their copies, without waiting for the registry to prepare the type sets once again. Accordingly, the appeals are taken up for final disposal.

5. Brief facts of the case :

Mr. P.Thangavelu, (A1) appellant in Crl.A.No.340 of 2006 and P.Palanisamy, (A2) appellant in Crl.A.No.330 of 2006 were Sub-Registrar and Office Assistant respectively, working at Sub Registrar Office, Mallasamudram during the year 1991. One Mr. P.Thangavelu son of Palanisamy, Nadupatti village, Rasipuram came to the Sub Registrar Office for registration of a settlement deed on 05.02.1991. The first accused being the Sub-Registrar at Mallasamudram Sub-Registrar Office after receiving the settlement deed document had issued receipt of Rs.45/-, thereafter, demanded Rs.50/- for himself for registration and Rs.10/- for the Office Assistant who is arrayed has A2 and told him to come on 07.02.1991 with bribe money.

6. On 07.02.1991, again when P.Thangavelu went to the Sub-Registrar Office he met A2 who told him that without giving bribe, he cannot get the document. Therefore, not inclined to give bribe to P.Thangavel has given a complaint to Vigilance and Anti Corruption Wing, Salem on 09.02.1991. The said complaint was taken for investigation and pre trap proceedings was conducted in the presence of the official witnesses and others. Thereafter, the defacto complainant P.Thangavelu along with accompanied witnesses, D. Neelasamy went to the Registrar Office at about 4.00 pm on 11.02.1991 and first met A2. A2 informed the arrival of the de facto complainant to A1, who in turn ask the de facto complainant to wait and come after sometime. Thereafter, when A2 called the de facto complainant, he went inside and showed the receipt given to him on 05.02.1991. When A1 enquired whether he has brought the money, de facto complainant answered in affirmative. Thereafter, A1 directed the defacto complainant to give the money to A2, sign the receipt and collect the document. After giving the tainted money to A2,

the de facto complainant signed the receipt and collected the documents. He came out of the Sub Registrar Office and gave the pre-arranged signal to the trap team. Thereafter, the trap team entered the Registration Office conducted phenolphthalein test in the hands of the accused and found positive. Thereafter, tainted money was recovered from A2.

7. After completion of the trap proceedings, investigation commenced and during the investigation, they have found that A1 and A2 are in the habit of demanding illegal gratification from the public who come for registration of documents or for Encumbrance Certificate. Therefore, two final reports have been filed, one for specific charge of demand and acceptance of bribe of Rs.60/- from the de facto-complainant P.Thangavelu son of Palaniappan of Nedumbadi village and the second final report in respect of habitual demand and acceptance of illegal gratification by abusing their official position quoting incidences

(i). Receiving Rs.1500/- from one Chellappa Gounder son of Nelliappa Gounder for registering the sale deed on 21.01.1990;

(ii). Demand and acceptances of Rs.110/- on 24.12.1990 from Chellappa Gounder son of Nelliappa Gounder for issuing Encumbrance Certificate;

(iii). Demand and acceptance of Rs.200/- and Rs.20/- respectively by A1 and A2 from Alamelammal wife of Krishnan Chettair for registering the sale deed presented by her on 11.02.1991;

(iv). Demand and acceptance of Rs.400/- and Rs.20/- respectively by A1 & A2 on 11.02.1991 from Duraisamy Gounder son of Ramasamy Gounder as illegal gratification for registering the settlement deed in favour of Sekar.

(v). Demand and acceptance of Rs.100/- and Rs.10/- respectively by A1 and A2 on 11.02.1991 from Thiru. Appusamy for registering a sale deed;

(vi). Demand and acceptance of Rs.10/- by A1 On 11.02.1991 from A.Narayanasamy for Assisting the Sub Registrar A1 in registration the sale deed.

(vii). Demand and Acceptance of Rs.20/- by A2 on 11.02.1991 from Thiru Madeshwaran son of Kanesan has illegal gratification to issue encumbrance certificate.

(viii). Demand and acceptance of Rs.1000/- by A1 on 30.11.1990 from Thangaraj son of Kandasamy as illegal gratification for registering three separate documents.

(ix). Demand and acceptance of Rs.10/- each by A2 from Thangaraja, Vekatachellam and Nagesh on 30.11.1990 for registering the documents. Before the trial court, the appellants had requested for joint trial in view of the fact that the most of the documents and witnesses are common. Accordingly, the trial court has conducted joint trial, found that in the Special C.C.No.1/2002 the evidence for prosecution is not adequate hence acquitted the accused. In so far as Special C.C.No.1/2002 independent case of demand and acceptance of Rs.50/- and Rs.10/- respectively by A1 and A2 as reward or motive for registering the settlement deed presented by P.Thangavelu son of Palaniappan Nedubati Village. The trial court found them guilty and sentenced them to undergo one year Rigorous imprisonment and to pay a fine of Rs.1,500/- in default to undergo four months Rigorous imprisonment under section 7 of Prevention of Corruption Act and to undergo two years Rigorous imprisonment and to pay a fine of Rs.1,500/- in default to undergo four months rigorous imprisonment for offence under section 13(1) (d), r/w 13(2) of Prevention of Corruption Act.

8. The case of the appellant

The trial court failed to appreciate the evidence let in by the prosecution, which lacks corroboration and credibility. In the absence of specific evidence that after pre trap proceedings; the tainted money was given to de facto complainant PW.2, which he had in his possession when he met the appellant, the trial court should not have accepted the prosecution case and ought not to have convicted the accused. The contradiction between PW.2 and PW.4 in respect of the place in which the 2nd accused kept the tainted money given by A2, goes to the root of the prosecution case and falsify the entire version of the prosecution.

9. The foundation of the prosecution case is weakened, when the demand and acceptance is not proved beyond doubt. The trial court ought not to have held the appellants guilty, in view of the failure of the prosecution to examine the independent witnesses by name Kumaravel. Instead Court should have drawn adverse inference against the prosecution. The enormous delay in prosecution should have been viewed in favour of the appellants and the fact of issuing receipt which is marked Ex.P2 by A1 immediately after presentation of the document on 05.02.1991, will go to show there was no deliberate attempt on the part of the accused to delay the registration.

10. The case of the prosecution is that the appellants demanded money for registration. If it is so, the appellants could not have accepted the document and issued receipt collecting Rs.45/- from the de facto complainant. In fact, the document was registered on 07.02.1991 by PW.10 and not by A2. Therefore the allegation made by the de facto complainant PW.2 that A1 and A2 demanded bribe for registering the document does not carry any truth.

11. In the absence of independent witness to corroborate the demand or acceptance of money, by the appellants, the finding of the trial court purely based on the deposition of the interested witness of PW.2 is liable to be set-aside.

12. The learned counsel for the appellants also submitted as alternative if even assuming the money was accepted by the appellant, the quantum of money being trivial and taking note of ordeal the appellant had undergone for the past 25 years and their age, lenient view shall be taken in the light of section

20(3) of Prevention of Corruption Act, 1988.

13. The learned Additional Public Prosecutor submitted that as far as merits of the case are concerned PW.2 (P.Thangavelu) evidence is very cogent and impeachable regarding the demand and acceptance of illegal gratification of A1 and A2. On 05.02.1991, when the document was presented for registration and on 11.02.1991 when PW.2 went to collect the document, specific demand of bribe had been made and same is spoken by PW.2 This evidence is corroborated through the evidence of PW.9 Boopathy who has accompanied PW.2 the de facto complainant on 05.02.1991, for presenting the settlement deed for registration. On 11.02.1991 the demand of bribe by A1 is spoken by PW.2 and corroborated by the accompanied witness PW.4 (Neelasamy). The recovery of tainted money from A2 is well proved through the evidence of Trap laying Officer PW.20. (Swamiappan). The chemical analysis report confirming the presence of Phenolphthalein in the hands wash solution of A2 collected during the trap proceedings proves the factum of handling the tainted money given by the PW.2. In the absence of plausible explanation for the acceptance of money, from PW.2, it is to be presumed that the money has been accepted as illegal gratification. Hence, there is no error in the judgment of the Trial Court:

Point for consideration

Whether the prosecution evidence is suffice to hold the appellants guilty of demand and acceptance of illegal gratification, of Rs.60/- from PW.2 for registering the Settlement deed?

14. PW.1 is the sanctioning authority who has accorded sanction to prosecute A1 and A2 in the sanction order, PW.1 has mentioned that on 05.02.1991 at about 3.30pm at the office of Sub Registrar Mellasamuthram. Mr. P.Thangavelu (A1), Sub Registrar and Palanisamy (A2) Office Assistant attached to Sub Registrar Office at Melasamutham had demanded bribe of Rs.50 and Rs.10 respectively for registering the settlement deed of P. Thangavelu of Nedupadi village.

15. PW.2 in his evidence as specifically stated he went to Sub Registrar office at Mellasamuthram on 05.02.1991 along with K. Boopathy (PW.9) at about 3.30 PM. PW.9 K.Boopathy also in his deposition support the evidence of PW.2, that on 05.02.1991 he along with PW.2 went to the Sub Registrar Office and met A1 at about 3.30pm and presented the settlement deed for registration. Thus specific case of the prosecution is that on 05.02.1991 at 3.30pm, PW.2 and PW.9 went to Sub Registrar Office met A1 and presented the settlement deed for registration and A1 received the document, issued receipt of Rs.45/- after receiving the money. The receipt is marked as Ex.P.2. Thereafter, it is alleged that A1 demanded Rs.50/- as bribe and A2 demanded Rs.10/- as bribe for him.

16. Perusal of the receipt which is marked as Ex.P.2 indicates that a sum of Rs.45/- has been received for registering the document presented by P.Thangavelu and he has been asked to came on 07.02.1991 at about 5.00 pm for collecting the document. The document which has been presented for registration is marked as Ex.P.17.

17. Perusal Ex.P.17, settlement deed reveal that the seal of the Sub Registrar Office is affixed on the back of the first page. The seal show that the document was presented by the defacto complainant for registration on 05.02.1991 between 12.00pm to 1.00pm. The seal which is found on the back of Ex.P.17 is the documentary evidence to show that the P.W.2 has presented the settlement deed before the Sub Registrar on 05.02.1991 between 12.00pm to 1.00pm and at 3.30pm as deposed by PW.2 and PW.9. This entry falsifies the allegation of PW.2 that he went to Sub Registrar Office on 05.02.1991 at 3.30pm along with K. Boopathy and at the that time after issuing receipt the Ex.P.2; A1 demanded Rs.50/- and A2 demanded Rs.10/-. The falsehood of PW.2 regarding the time he went to Sub Registrar Office on 05.02.1991 is very crucial and expose the unreliability. For the Demand of bribe alleged to have been made on 05.02.1991, the complaint to the respondents is lodged only on 11.02.1991 at 11.00 hours. The complaint which is marked as Ex.P.3 show that the demand and acceptance of illegal gratification was made for registering the Sale deed Ex.P.17 Whereas, from the endorsement found in the Ex.P.17 of the document, this court finds that it was presented on 05.02.1991 between 12.00pm to 1.00pm and registered as document No.78/91 on 07.02.1991 by PW.10 since A1 was on other duty on that day.

18. It is the case of the prosecution that on 07.02.1991 PW.2 went to Sub Registrar office at about 5.30pm to collect the document as noted in the receipt of P.2. When he went to the Sub Registrar Office he could met only A2 who enquired whether he has brought the bribe money. A2 alleged to have told that PW.2 that without giving bribe he will get back his document. This version of PW.2 is not supported or corroborated through any other witnesses. If they had really demanded for illegal gratification, on 05.02.1991 the de facto complainant would have approached the Vigilance and Anti corruption wing immediately. There is no explanation for the delayed complainant on 11.02.1991.

19. The case of the prosecution is that on 11.02.1991 the defacto complainant (PW.2) along with PW.4 the accompanying witness went to Sub Registrar Office. A2 after ascertaining that PW.2 has brought the bribe money, took him to A1. A1 had also asked whether he has brought the money. When PW.2 extended the tainted money to A1, he has directed PW.2 to give the money to A.2, sign in the receipt and collect the document. Accordingly, A2 has received the money. Kept it in his left side pant pocket and thereafter, he has demanded his portion of bribe Rs.10/-.

PW.2 has deposed that he give Rs.10/- to A2 which was received by A2 and kept in the same left side pocket.

20. PW.2 evidence does not tally with the evidence of PW.4 who has deposed that at 4.00PM, he along with PW.2 and member of the Trap team went to Mellasamuthram, Sub Registrar Office. When they entered the Office, in the veranda they met A2 who enquired PW.2 whether he has came ready. While, PW.2 has not said anything about the said enquiry made by A2, PW.4 embellished this portion. Further, when A2 took them to A1 seat, A2 has enquired whether he has brought the money. When PW.2 answer in affirmative, A-1 directed PW.2 to give the money to A2. Sign the receipt and collect the document. Thereafter, A2 gave five ten rupees tainted notes to A2 which was received by A2 and Kept in the left side pocket. When A2 demanded his part of bribe. PW.2 gave tainted note of Rs.10/- to A2 which was received by him and kept in his right side pocket.

21. On comparison of the evidence PW.2 and PW.4 regarding the manner in which the money alleged to have transferred from PW.2 to A2 the embellishment and contradiction found in their evidences, coupled with the fact that, the presence of PW.4 who is the Superintendent in the Principle Conservative of Forest, Salem without any written request by TLO to his superior, or written direction to him by his Superior cause doubt whether he was really present and witnessed the trap proceedings. If the evidence of PW.4 is eschewed for the contradiction and embellishment, the only evidence remains is the deposition of PW.2. Reading of PW.2 evidence fails to inspire the confidence of this Court, since, the demand of bribe by A1 and A2 on 05.02.1991 at about 3.30pm is proved to be false through documentary evidence namely the endorsement made by Sub Registrar Office on the back of Ex.P.17 document.

22. The alleged visit to the Sub Registrar Office by PW.2 on 07.02.1991 is highly doubtful and likely to be imaginary claim since on that day, the document was already registered and kept ready for delivery. If PW.2 had really gone to the Sub Registrar on that day, and had met PW.10 who has registered the document on that day, he would have got back the document. The allegation that A2 has demanded bribe and told him that he cannot get the document without paying bribe is true, he would have immediately met the higher office in the Sub Registrar Office namely, PW.10 and sought for return of the documents or he could have immediately gone through the Vigilance Wing to lodged his complaint instead of waiting for four days from 07.02.1991 to 11.02.1991. This delay makes the case of prosecution doubtful. It is also to be noted that after completion of the trap proceedings, the investigation has gone to further extend and 2nd charge sheet has been filed for habitual demand for illegal gratification by A1 and A2 from various persons. However, for those incidents the prosecution could not able to establish the guilt of the appellants. In fact, except two witnesses PW.22 and

PW.23 who have alleged to have given bribe to got their documents registered, no other witnesses for the prosecution has deposed that A1 or A2 demanded money for registration of their documents or for issuing encumbrance certificate. The witnesses who were examined for the said purpose have turned hostile. That is the reason why the trial court has dismissed the connected case registered in Special C.C.No.1/2002. No appeal has been preferred by the State against the order of the acquittal.

23. No doubt PW.2 had spoken about the demand and acceptance of illegal gratification by A1 and A2. But his evidence is not only left uncorroborated but also found to be false. Evidence is respect of alleged demand made on 05.02.1991 is highly doubtful. Evidence in respect of alleged demand made by A2 on 07.02.1991 is uncorroborated. In respect of the recovery of tainted money from A2 is concerned, though PW.2, PW.4 and PW.24 has spoken about the factum of recovery of tainted money from A-2, evidence given by PW.2 and PW.4 creates the doubt, contradictory whether the money was accepted by PW.2 as illegal gratification or otherwise. On cumulative assessment of the evidence let in by the prosecution, this court holds that it is unsafe to rely the evidence of PW.2 regarding demand of bribe Rs.50/- and Rs.10/- by A1 and A2 respectively on 05.02.1991 at about 3.30PM. Contrary to the entry found in Ex.P.17.

24. Hence, the conclusion of the trial court holding the appellants guilty relying upon the evidence of PW.2 and PW.4 is liable to revisited and reversed. Accordingly, the judgment of the trial court is set aside.

25. In the result, the Criminal Appeals are allowed. The judgment of conviction and sentence passed by Special Judge-cum-Chief Judicial Magistrate, Namakkal District in C.C.No.1 of 2002 dated 29.03.2006 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 VI)

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge cum Chief Judicial Magistrate,
Namakkal

2.The Chief Judicial Magistrate, Namakkal

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

4. The Inspector of Police
Vigilance and Anti-corruption,
Salem.

5.The Record Keeper, Criminal Section,
High Court, Madras.

+1cc to Mr.A.K.Kumarasamy, Advocate Sr.No.1940

MR(CO)
sm:14.2.2018

judgment in
Crl.A.Nos.330 & 340 of 2006