Bail Slip

The Petitioner namely Sukumar(A1) S/o Late Rajagopal, aged about 56 years was released on bail as per order of this court dated 17.08.2012 in Crl.M.P. No. 1/2012 in Crl.A. No. 505/2012 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.07.2018	Pronounced on: 18.07.2018

Coram
The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No. 505 of 2012

Sukumar. R
Firka Surveyor,
Bhavani Taluk,
Erode District. ... Appellant/Accused No.1

/versus/

State by Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode Division,
(Crime No.9/AC/2003/ER) ... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, against the judgment of the learned Special Court for offences under Prevention of Corruption Act, Coimbatore in Special C.C.No.77 of 2011 dated 06.08.2012.

For Appellant : Mr.A.K.Kumarasamy, Senior Counsel
for S.Kaithamalaikumaran

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

J U D G M E N T

Thiru. R.Sukumar, Firka Surveyor, Bhavani Taluk, Erode District the appellant herein, for demand and receipt of illegal gratification of a sum of Rs.2,250/- from Thiru. Ponnusamy on 22.08.2003 to change the name in Patta, was tried for offences under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The trial Court found him guilty and sentenced to undergo two years R.I and a fine of Rs.1,000/- in default to undergo one month R.I for offence under Section 7 of

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Prevention of Corruption Act and to undergo three years R.I and a fine of Rs.2,000/- in default two months R.I for offence under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2. Aggrieved, the appellant herein has challenged the judgment of the trial Court on the ground that the trial Court had failed to appreciate that Firka Surveyors are not empowered to transfer Patta. They have no role in the process of mutation of record during the relevant point of time. The trial Judge failed to consider the procedure involved in the Patta transfer process, though it was elicited through prosecution witnesses that any application for transfer of patta should be presented to the Tahsildar or Zonal Deputy Tahsildar who on receipt of the same has to forward it to the Firka Revenue Inspector. The Revenue Inspector, after verifying the land records with the Village Administrative Officer, will submit his report to Tahsildar. If there is any doubt regarding extend/boundary only then it will be referred to Firka Surveyor for inspection. In such cases after receiving the inspection report from the Firka Surveyor, the Tahsildar will pass appropriate order.

3. In the present case, when the matter was referred to the appellant for inspection, the appellant Mr.Sukumar being the Firka Surveryor has inspected the field and prepared his report Ex.D.1 to the Tashildar on 08.08.2003 itself. Whereas, the alleged demand of illegal gratification for issuance of transfer Patta is 11.08.2003, which is much after inspection and the date of report. Further the report was forwarded to the Tahsildar on 18.08.2003 itself. Whereas the alleged receipt of gratification to recommend name change in patta was on 21.08.2003. Since the appellant had already completed his role of inspection and report, the allegation, he demanded and received graft for recommending, is against probability.

4. The trial Court had failed to consider the explanation given by the appellant for the receipt of Rs.2,250/- from Ponnusamy [the defacto complainant]. The proceedings of Land Reforms Director fixing target in Small Savings Scheme and reminder for shortfall in the target which are marked as Ex.D.2 and Ex.D.3 were not at all considered by the trial Court. The possible explanation by the appellant for the receipt of the money and the failure of the prosecution to prove beyond doubt the demand and acceptance of any illegal gratification ought to have endured honourable acquittal to the appellant. Contrarily, the trial Court had erroneously held him guilty without proper appreciation of evidence.

5. The learned Senior Counsel appearing for the appellant would submit that the complaint given by Ponnusamy [PW.2] which is marked as Ex.P.2 by the prosecution could

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indicate that, PW.2 gave an application for transfer of patta on 01.08.2003 at Taluk Office, Bhavani. When PW.2 went to Taluk Office on 08.08.2003 to enquire about his application, he was directed to met the surveyor. When PW.2 met the appellant herein [Mr.Sukumar], he received the documents and told him that he should inspect the property. After inspection, on 11.08.2003 PW.2 met the appellant at 10.00 am in the Taluk Office. On that day, the appellant demanded bribe of Rs.2,250/- to recommend Patta transfer. Whereas, Ex.D.1 the inspection report of the appellant dated 08.08.2003 has positively recommended for transfer of patta in favour of the defacto complainant which belies the case of the complainant.

6. Relying upon the judgment of Hon'ble Supreme Court in T.Subramanian Vs. The State of Tamil Nadu reported in AIR 2006 SCC 836. The learned Senior Counsel appearing for the appellant would submit that the explanation offered by the accused is plausible in respect of marked currency note recovered from the accused. The animosity between the complainant and the accused is also proved. Therefore, the accused is entitled for an acquittal.

7. To emphasis that the evidence of defacto complainant and shadow witness cannot be taken as gospel truth since both of them are interested witnesses. The explanation given by the accused immediately after the trap was not properly recorded by the Trap Laying Officer. When the explanation offered by the defence is probable and possible, the trial Court ought not to have drawn the presumption under Section 20 of Prevention of Corruption Act to hold the appellant guilty.

8. The learned Senior Counsel appearing for the appellant also relied upon the following judgments

(i). State by Inspector of Police Vigilance and Anti Corruption, Tiruchirappalli vs. Magalingam reported in 2009 (3) MWN (Cr.) 356.

(ii). R.Gunalan vs The State by Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Erode reported in 2012 (3) CTC 38

(iii). Dass, Inspector of Police, (Ex-Inspector of Police, Cuddalore Police Station, Cuddalore-2 vs. State, rep. by Superintendent of Police, Vigilance and Anti Corruption Wing, Cuddalore reported in (2012) 2 MLJ (Crl) 225.

9. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant and his two brothers purchased 6.10 acres of land in the year 1980. After succeeding in the civil dispute, they sought for mutation of revenue records. An application for transfer of Patta in their name was

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submitted by the defacto complainant on 01.08.2003. Following his application on 08.08.2003 the defacto complainant met the appellant/accused who was the Firka surveyor at that time. The appellant perused the documents and inspected the land on the same day. On his instruction, the defacto complainant met the appellant again on 11.08.2003 on that day appellant demanded illegal gratification of Rs.2,250/- to recommend mutation of revenue records in favour of the defacto complainant and his brothers. The appellant have also gave some papers to be signed by the defacto complainant and his brothers duly certified by the Village Administrative Officer. When the defacto complainant Ponnusamy met the appellant on 21.08.2003 along with the documents signed by his brother and attested by the Village Administrative Officer, the demand and receipt of illegal gratification happened in the presence of shadow witness.

10. Raja [PW.12], Inspector of Police who took up the complaint and registered the First Information Report [Ex.P.18] set trap. After receiving the pre-arranged signal from PW.2, the trap team entered into the office of the appellant. He learned from the decoy witnesses that in the presence of shadow witness the appellant demanded and received Rs.2,250/- from Ponnusamy [PW.2] and kept it in his shirt pocket. On enquiry with the appellant they found that the appellant had given Rs.500/- to Velusamy Senior Draftsman. Rs.1,750/- was recovered from A1 appellant herein which was kept in his pant pocket and Rs.500/- was recovered from A2 [Velusamy] from his shirt pocket. The currency recovered from the accused persons were verified and found tally with the currency numbers recorded in the entrustment mahazar which is marked as Ex.P.4. The initial explanation offered by the appellant herein has been recorded in the recovery mahazar which is marked as Ex.P.10. Wherein, the appellant has admitted the receipt of illegal gratification of Rs.2,250/- from Ponnusamy [PW.2] and gave Rs.500/- to Velusamy, Senior draftsman as his share. The later explanation offered by the appellant through Ex.D.2 and Ex.D3 is only an afterthought. The date of Ex.D.2 and Ex.D.3 are much subsequent to the trap proceedings and therefore the trial Court has rightly rejected the explanation to hold that it is not a plausible explanation. Hence, sought for dismissal of the appeal.

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11. Points for consideration

> "Whether the trial Court conclusion that the prosecution has proved the demand and acceptance of illegal gratification by the appellant but not rebutted by the appellant is proper and legal."

12. To prove the charges, the prosecution has examined 13 witnesses, marked 21 Exhibits and 11 material objects. On

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the side of the defence 3 Exhibits were marked.

13. The application for mutation of Revenue records from Ponnusamy [PW.2] and his brothers not denied. In fact the register maintained for application of transfer of Patta which is marked as Ex.P.8 indicates that on 01.08.2003, the Taluk Office, Bhavani has received the application for Patta transfer from Ponnusamy [PW.2]. In Ex.D.1 the report of the appellant indicates that pursuant to the application received from Ponnusamy [PW.2] his brothers Muniappan and Muthu Gounder all three sons of Perumal Gounder, the appellant had conducted field inspection, enquired and had prepared the report. At the bottom of the report, the appellant has signed and affixed the date as 18.08.2003, the report is addressed to Tashildar, Bhavani, Erode District. This document is relied by the appellant and marked through Nallan [PW.1]. The scrutiny of this document though indicates that it was signed on 18.08.2003 by this appellant, there is no indication when it was forwarded to Tashildar and the date of receipt by the Tashildar.

14. Be it as it may, the specific allegation in the complaint is that the appellant after inspecting the field on 08.08.2003 asked him to meet him on 11.08.2003 at his office. On that day the appellant had given some Forms to get signature from his brothers and Village Administrative Officer and demanded Rs.2,250/- for taking favourable action. The appellant has instructed to bring the money on the day. On 21.08.2003, after getting attestation from the VAO and thumb impression from his brothers, he had met the appellant at his office at 5.00 pm. The appellant has reiterated his demand of Rs.2,250/- and unless if he gave bribe of Rs.2,250/- he will not recommend for patta transfer.

15. On a combined reading of Ex.P.8 and the complaint Ex.P.1, it is proved by the prosecution that in spite of completing his inspection and preparation of the report, the appellant has not despatched it to Tashildar expecting illegal gratification. PW.2 [Ponnusamy] has stated in his complaint, which is reiterated in his deposition that when he met the appellant on 11.08.2003, the appellant demanded bribe of Rs.2,250/- to recommend for mutation of revenue record. Again on 21.08.2003, he has reiterated the demand. On the day of trap [22.08.2003], in the presence of shadow witness the appellant had asked PW.2 whether he has brought the money. The acceptance of Rs.2,250/- which was smeared with phenolphthalein and entrusted to PW.2 under entrustment mahazar is spoken by PW.2 [Ponnusamy] the defacto complainant and PW.3 [Rangasamy] the shadow witness. When the appellant was put to answer, the incriminating material against him as per under Section 313 of Cr.P.C, he had explained that he has received Rs.2,250/- from PW.2 [Ponnusamy] towards Small Savings Scheme. Since, A2

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[Velusamy] requested a loan of Rs.500 urgently, he gave Rs.500 to Velusamy [A2] and kept the balance amount in his pant pocket. He intend to purchase the Small Saving Certificate on the next day after receiving back the hand loan given to Velusamy [A2].

16. The Trial Court had accepted the case of the prosecution as spoken by PW.2 [Ponnusamy] and PW.3 [Rangasamy] that the appellant has received bribe on 22.08.2003 from Ponnusamy [PW.2] and kept it in his shirt pocket, with intention of receiving illegal gratification to do a favour to PW.2 by abusing his official position. Thus, the prosecution has proved the demand and acceptance of illegal gratification by the appellant. The trial Court has also rejected the explanation offered by the appellant that the money was received towards Small Saving Scheme. The reason for rejecting the explanation is that, deposit under Small Saving shall be done only at post office. There is no necessity for the appellant to receive cash directly. Furthermore, Ex.D.2 and Ex.D.3 fixing target for small savings scheme is addressed to Deputy Tashildar and not to Firka Surveyor. The evidence of Nallan [PW.1] regarding the manner in which the target should be achieved dislodge the element of possibility in the explanation of the defence.

17. As far the co-accused in concerned, the trial Court has acquitted him since, there was no material evidence to show the co-accused demanded illegal gratification from PW.2 or he shared the common intention with A1 in receiving the illegal gratification.

18. The evidence of PW.2 and PW.3 are cogent and inspires the confidence of the Court that there was demand of illegal gratification by the appellant. Pursuant to the complaint of Ponnusamy [PW.2] the Vigilance and Anti Corruption Inspector had initiated action. The trap has been laid and the appellant has been caught with possession of tainted money which was entrusted to PW.2 on the earlier part of the day. The corroborative evidence of PW.3 who had witnessed the demand of money and acceptance of the same does not indicate any element of doubt in its reliability. The appellant in spite of his inspection of the property as early as 08.08.2003 and in spite of the Court direction in favour of PW.2, had delayed in despatching the recommendation to the Tashildar expecting bribe money preparation of report but not forwarding it to the higher authority only enhance the case of the prosecution. When the prosecution has proved beyond doubt, the demand and acceptance of illegal gratification, it is needless to rely upon the Section 20 of Prevention of Corruption Act, it is for the appellant/accused to rebut the presumption by adducing the evidence which could be taken has possible or probable.

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19. The perusal of Ex.D.2 would show that, it is the proceedings of Deputy Director Land Surveyor Department, Erode dated 18.08.2003 For Bhavani Zone, the Deputy Tashildar had been directed to achieve the target of Rs.15 lakhs under Small Saving Scheme. This communication has been signed by the Superintendent at Collectorate on 20.08.2003 and thereafter despatched to the respective Deputy Tashildar.

20. Ex.D.3 dated 20.11.2003 is the proceedings of Assistant Director Nallan [PW.1] informing the Zonal Deputy Tashildar of respective units about shortage in achieving Small Saving target. This communication has been signed by Superintendent of that office on 21.11.2003 and thereafter despatched to respective officers. Both these communications have emanated much after the alleged demand of illegal gratification. Nallan [PW.1] who is the author of Ex.D.1 had specifically stated in the re-examination that, for small saving scheme cash should not be received directly. Therefore, it is evidently clear that the explanation offered by the appellant is only an afterthought, to take coverage under the communication which was subsequent to the demand of illegal gratification.

21. The Ex.D2 and Ex.D.3 are not only subsequent to the date of demand of illegal gratification, these two documents were not addressed to the appellant but to his higher official [Deputy Tashildar]. These two documents cannot be of any material value to justify the receipt of Rs.2,250 from Ponnusamy [PW.2] on 22.08.2003, moreso when collection of cash for Small Savings Scheme by Firka Surveyor not permitted. Therefore, this Court finds no error in the judgment of the trial Court.

22. In the result, the Criminal Appeal No.505 of 2012 is dismissed. The judgment and sentence passed by the learned Special Judge [Prevention of Corruption Act], Coimbatore in Special C.C.No.77 of 2011 dated 06.08.2012is hereby confirmed. The trial Court is directed to execute warrant to secure the appellant and commit him to prison to undergo the remaining period of sentence, if the appellant fails to surrender himself within six weeks from today.

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s/d-
Assistant Registrar(CS VII)

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Sub-Assistant Registrar

bsm

To

1. The Special Court [for Prevention of Corruption Cases]
   Coimbatore.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption,
   Erode Division.

3. The Public Prosecutor,
   High Court, Madras.

+1 CC to Mr.A.K. Kumarasamy, Advocate sr 47515.

Criminal Appeal No. 505 of 2012

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