IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :19.06.2018

Pronounced on :25.06.2018

Coram:

The Hon'ble Dr.Justice G.JAYACHANDRAN

Criminal Appeal No.20 of 2016

R.Lakshmanan .. Appellant

/versus/

State by
The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.
Crime No.3/2008/AC ..Respondent

Criminal Appeal is filed under Section 374 (2) of the Criminal Procedure Code praying to set aside the conviction and sentence made in Spl.C.C.No.12 of 2011 by the learned Special Judge, Special Court for cases under Prevention of Corruption Act, Coimbatore, dated 29.12.2015 and acquit the accused.

For Appellant :Mr.B.Kumarasamy

For Respondent :Mr.K.Prabakar, APP

JUDGMENT

This criminal appeal is directed against the judgment of the Special Court for cases under Prevention of Corruption Act, Coimbatore in Spl.C.C.No.12 of 2011, dated 29.12.2015 convicting the appellant herein to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-in default, to undergo one month Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to under one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The above sentences imposed on the accused was ordered to be run concurrently.

2. **Brief facts of the case is as follows:**

Thiru.Dhamotharasamy, who was employed in M/s Bullet Paper Boxes Company was retrenched from service due to lock out. He has raised a claim petition before the Labour Court, in which award for Rs.86,187/- was made in his favour. To recover the said money, proceedings under Revenue Recovery Act was initiated. As per the direction of the District Collector, Coimbatore, the Tahsildar issued order to recover the money under Revenue Recovery Act. When the papers were forwarded to the Village Administrative Officer, Vellakinar Village, the appellant/accused R.Lakshmanan, who was the Village Administrative Officer for the concerned Village on 11.02.2008 had demanded Rs.5,000/- from the defacto complainant Mr.Dhamotharasamy to execute the revenue recovery order issued by the Tahsildar, Coimbatore (North) Taluk, Coimbatore District and after negotiation on 14.02.2008, reduced to Rs.2,000/-. The accused-Village Administrative Officer told the defacto complainant to give Rs.1000/- on 15.02.2008 as initial payment.

3. The defacto complainat Mr.Dharmotharasamy, who happened to be Union Leader of a Labour Union attached to a political party was not inclined to give bribe. So, he gave a written complaint to the Inspector of Police, Vigilance and Anti Corruption, Coimbatore. Based on his complaint, First Information Report was registered by Mr.Karunakaran, Inspector. Trap was arranged on 15.02.2018 between 11.30 hours to 17.05 hours. After demonstrating the significance of phenolphthalein test to the defacto complainant and the other official witnesses namely, 1.Thiru.Manohar, Assistant, Chief Educational Office, Coimbatore and 2. Thiru.Vasudevan, Assistant, Assistant Director of Animal Husbandry, Coimbatore, the defacto complainant was asked to meet the accused and if he makes demand of

any illegal gratification, the currency smeared with phenolphthalein has to be given to the accused. As instructed by the trap team, the defacto complainant and the accompanying witnesses went to the Village Administrative Office. The accused was not at his office. The accused was contacted over phone and as per his request, PW-2 and PW-3 along with trap team went to the Ragam Bakery, Gounder Mill (PO) Coimbatore. On seeking the defacto complainant, the accused demanded and accepted bribe amount of Rs.1,000/- from the defacto complainant. He counted the money and kept it in his right side pant pocket between 14.15 hours to 14.20 hours in the presence of the accompanying witness Mr.Manohar. Immediately after that the trap team caught the accused. Phenolphthalein test was conducted on the fingers of both hands of the accused. It proved positive and thereafter, the tainted money of Rs.1,000/- was recovered from the accused, which was kept in his pant pocket. The recovered money tallied with the currency numbers noted in the entrustment mahazar. Thereafter, the pant pocket was also subjected to the phenolphthalein test and found positive. The sample solutions were collected for chemical analysis test. The pant was seized from the accused, after proving alternate cloth. The entire trap proceedings were reduced into writing by preparing mahazar. After completion of the investigation, final report was filed before the trial Court.

4. The trial Court framed charges against the accused for demand of Rs.5,000/- on 12.02.2008 and 13.02.2008, later reduced to Rs.2,000/- for recovery of Rs.86,187/- under the Revenue Recovery Act. On 14.02.2008 he demanded Rs.2,000/- as advance and after recovery of the money, the balance was to be paid. Later on 15.02.2008 he demanded Rs.1000/- as initial payment and received the same at Ragam Bakery, near Gounder Mill bus stop, Mettupalayam Road. Having demanded and received illegal gratification other than the legal remuneration, the accused was tried for the offences under Section 7 of the Prevention of Corruption Act, 1988 and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The prosecution has examined 16 witnesses. 12 exhibits and 8 material objects were marked.

5. The trial Court, after considering the evidence placed by the prosecution and the explanation offered by the accused, had held the accused guilty of charges under Section 7 as well as 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him as stated above.

6. The appellant herein challenges the trial Court order on the

ground that the trial Court had wrongly concluded that the appellant as Village Administrative Officer demanded and obtained bribe of Rs.1,000/- from the defacto complainant without properly considering the fact that the Labour Court award in C.P.No.865 of 2003 was stayed by the High Court in W.P.No.1336 of 2008 on 21.01.2018. Therefore, when the appellant went to the premises of M/s Bullet Paper Boxes Company to execute the recovery order passed by the Tahsildar, he was informed about the stay order, so, he was not able to execute the same. The defacto complainant, who was aware of this fact, gave a false complaint against him as if he has demanded bribe to execute the revenue recovery order. PW-2 knows fully well that in the light of the High Court stay, the revenue recovery order of the Tahsildar could not be executed. The trial Court besides failing to accept the explanation given by the accused, has also failed to consider the contradictions between PW-3 and the trap laying officer PW-15 Mr.Karunakaran regarding the phenolphthalein test conducted on the fingers and also recovery of the pant during the trap proceedings alleging the bribe money was kept in the pant pocket.

7. The learned counsel appearing for the appellant would contend

that the case of the prosecution is that PW-2 gave the complaint [Ex.P2] alleging the demand of illegal gratification by the accused/appellant and based on the said complaint Ex.P2, trap was arranged. It is further case of the prosecution that on the day of trap, the defacto complainant along with PW-3 went to the Village Administrative Office having found that the accused is not in his office, PW-2 contacted him overphone and as per the instruction of the accused, they went to the Ragam Bakery near Gounder Mill Bus stop. After the tainted money was given to the accused, the trap team led by PW-15 caught the accused, took him to near by the building and post trap proceedings was conducted. This version of the prosecution has not been supported by any of the witness. While PW-2 defacto complainant is a motive witness, who had malice against the accused, PW-3-Mr.Manohar being an official witness arranged by the prosecution is also not reliable. The other witnesses namely PW-4 Mr.K.Govindarajan, Revenue Inspector (I/C) of Saravanampatti at the relevant point of time, PW-5 Mr.Natarajan, Supervisor of Security and Personal Service Private Limited, where the alleged post trap proceedings was conducted by the prosecution and PW-6 Mr.Sundarapandian, Deputy Tahsildar, were treated as hostile.

8. The trial Court has failed to appreciate the explanation given by the accused that he was unable to execute the revenue recovery order issued in favour of the defacto complainant because of the stay order granted by the High Court. But the defacto complainant with a wrong impression that the accused has delayed the process had given the false complaint. Without making any preliminary enquiry about the veracity of the complaint, the trap laying officer has registered the complaint and to ensure the success of the trap proceedings, the trap team had made PW-3 to give false evidence in support of the prosecution. While all other witnesses have not supported the case of the prosecution, more particularly the recovery of the tainted money from the accused it is clear that the prosecution has failed to prove beyond doubt, the recovery of tainted money from the accused in the manner in which they have projected. Instead of disbelieving the case of the prosecution, contrarily, the Court below had erred by accepting the prosecution case and rejecting the defence explanation. Hence, the judgment is required to be reverse.

9. Per contra, the learned Additional Public Prosecutor by way of defending the judgment and the case of the prosecution would submit that the initial demand of Rs.5,000/- on 11.02.2008 and the subsequent

demand on 12.02.2008 and 14.02.2008 are all very well proved from the evidence of PW-2 and his complaint which has no reason to suspect.

10. PW-2 an Ex-employee of M/s Bullet Paper Boxes Company had approached the Labour Court for retrenchment compensation and succeeded in it. It is an admitted fact even by the defence that the Tahsildar had issued revenue recovery order for recovery of Rs.86,187/- from M/s Bullet Paper Boxes Company. The revenue recovery order of the Tahsildar of Coimbatore North, dated 21.01.2008, is marked as Ex.P4. PW-2 in his complaint [Ex.P2] had deposed that he received the revenue recovery order from the Tahsildar and on 21.01.2008 handed it over to the Revenue Inspector and the Village Administrative Officer. Therefore, he frequently went to the office and enquired with the Village Administrative Office(accuse) about execution of the recovery order. On 11.02.2008 the accused told him if bribe of Rs.5000/- is given, he will recover the money. Then, after negotiating on 13.02.2008 and 14.02.2008 when the accused reduced his demand to Rs.2,000/-, the accused agreed to give Rs.1,000/-. The accused asked to give that on 15.02.2008. PW-2 in his deposition has reiterated the content of his complaint. Hence, there is no reason to suspect his credential about the demands made by the accused prior to

trap.

11. The demand and acceptance of the tainted money Rs.1,000/- by the accused is spoken by PW-2 defacto complainant and PW-3(accompanying witness). The chemical analysis test has proved positive to the presence of phenolphthalein in both hands of the accused and pant pocket proves the accused accepted the tainted money and kept it in his pant pocket. Though PW-5 had not supported the case of the prosecution witnessing recovery, his evidence does not disprove the case of the prosecution in respect of recovery, since the other witnesses namely, PW-3 accompanying witness and PW-15 trap laying officer had deposed about the recovery of tainted money from the possession of the accused. The minor contradictions regarding the alternate cloth given to the accused, after seizure of the pant does not go to the root of the prosecution case to disbelieve the recovery. Ex.P5 seizure mahazar is a contemporaneous document prepared immediately after the post trap proceedings and the same was forwarded to the Chief Judicial Magistrate on 18.02.2008. While there is overwhelming evidence to prove the demand, acceptance and the recovery of the money from the accused possession, failure to explain the possession of the tainted money should be presumed against

the accused. The trial Court had rightly appreciated the evidence of the prosecution on a holistic manner and found that the prosecution has proved the guilt of the appellant. The explanation given by the accused/appellant is not sufficient to rebut the presumption under Section 20 of the Prevention of Corruption Act, 1988. The respondent has also filed a counter reiterating the oral submissions made by the Additional Public Prosecutor.

12. **Point for consideration**:-

Whether the trial Court has erred in rejecting the explanation given by the accused and accepting the prosecution evidence to convict the accused?

13. PW-1 [Mr.M.Balachandran], Revenue Divisional Officer has accorded sanction to prosecute the accused. The sanction order is marked as Ex.P1. It is elucidated in the cross examination of PW-1 [Mr.M.Balachandran] that he had accorded sanction after perusing the statements of the witnesses, who were managing M/s Bullet paper Boxes Company in which the defacto complainant [PW-2] was employed. The prosecution has not examined any witness from M/s Bullet paper Boxes

Company, but non-examination of the person from that company may not be fatal to the prosecution case, the scope for alleged demand of bribe arose for execution of recovery of retrenchment money in view of the closure of M/s Bullet paper Boxes Company. While the materials placed by the prosecution before PW-1 is *prima faciely* sufficient to believe the allegation of demand and acceptance of illegal gratification, the sanction order cannot be held to be erroneous.

14. PW-2 the defacto complainant Mr.Dhamodarasamy had deposed about the retrenchment compensation awarded to him by the Labour Court and the recovery order(Ex.P4) issued by the Tahsildar. As per the deposition of the defacto complainant, on 15.02.2008 between 9.00a.m to 9.30 a.m he went to the Vigilance Office at Coimbatore and met Karunakaran, Inspector of Police[P.W.15] and gave the complaint [Ex.P2]. By 11.00 a.m., two official witnesses namely, Mr.S.Manohar(PW-3), who was working as Assistant in Chief Educational Office, Coimbatore and Mr.Vasudevan(not examined), who was working as Assistant in the Assistant Divisional Director of Animal Husbandry, Coimbatore, came to the Vigilance office. Thereafter, the Trap Laying Officer demonstrated the pre-trap proceedings and prepared entrust mahazar(Ex.P3) for entrusting

M.O.1 series, one 500 rupees note and five 100 rupees notes smeared with the phenolphthalein. He has deposed that from the Tahsildar, he received the revenue recovery order [Ex.P4] on 21.01.2008 and gave it to the accused[Village Administrative Officer] and the Revenue Inspector of the concerned Village on the same day. On 11.02.2008, when he met the accused, he had promised to get the money, if PW-2-defacto complainant pay the bribe of Rs.5,000/- and on subsequent dates (i.e.) 13.02.2008 and 14.02.2008, he had insisted to pay initially a sum of Rs.2,000/- to which he agreed to Rs.1,000/- only.

15. It is the specific testimony of PW-2 [Mr.Dhamotharasamy] that on 14.02.2008, at 10.30 a.m., the accused demanded Rs.2,000/- for which he told that he is not in a position to pay Rs.2,000/- and he can manage to pay only Rs.1,000/-. Since the defacto complainant was not inclined to pay the bribe, he had given the complaint(Ex.P2) to the Vigilance and Anti-Corruption Inspector on the next day i.e on 15.02.2008. The said complaint [Ex.P2] had been received by PW-15[Mr.Karunakaran] on 15.02.2008 at 09.30 hours and the First Information Report [Ex.P11] has been registered. The official witnesses 1.Manokaran and 2.Vasudevan had reached the Vigilance at about 11.15 hours and the entrustment mahazar

[Ex.P3] has been prepared, after phenolphthalein test demonstration. From Ex.P3, I find that pre-trap proceedings has been completed on 15.02.2008 at 12.30 hours.

16. According to the evidence of PW-2 [Mr.Dhamotharasamy], PW-2 and others left the Vigilance Office at 1.30 p.m and reached the Village Administrative Office by 02.00 p.m. The accused was not in his office. So, PW-2 contacted the accused over phone. The accused instructed the defacto complainant to come to Ragam Bakery near Gounder Mill Bus stop. He and the trap team went to Ragam Bakery, near Gounder Mill bus stop and reached at about 02.15 p.m., He saw the accused waiting for them. The accused enquired whether he has brought the money and in response, he took out Rs.1,000/- M.O.1 series (one number of Rs.500/- currency note and 5 numbers of Rs.100/- currency notes) from his shirt pocket and gave it to the accused. The accused received it, counted it and kept in his pant left side pocket and assured PW-2-defacto complainant that he will recover his due by Monday or Tuesday. This portion of the deposition is doubtful according to the defence, for the reason, on the day when recovery order was passed i.e., on 21.01.2008, there was a stay by the High Court for recovery of the award amount. This fact is known to the

accused and the defacto complainant. Therefore, there is no possibility or probability for the accused to demand bribe and accept it with an assurance that he will recover the money by coming Monday or Tuesday.

17. In the light of the above finding, improbability of demand and acceptance gets amplified by the falsehood of the prosecution regarding recover of tainted money from the possession of the accused. Apart from the witnesses PW-2 and PW-3, the other witness, who can corroborate the case of the prosecution is the person who alleged to have been present in the building, where the post trap proceedings was conducted. The said witness namely PW-5 Mr.Natarajan had turned hostile. He could only say that on 15.02.2008, when he was in duty, 5 to 6 persons came to the office, occupied the Manager Seat and brought ink in their suitcase. When he contacted his Manager, he told him that they are all Government Servants and he should extend necessary help to them, except this he did not know anything about the case.

18. On perusal of recovery mahazar [Ex.P-5], this Court finds that

apart from the decoy witness Manohar (PW-3) and the Trap Laying Officer(PW-15), two other witnesses namely, Mr.Vasudevan, one Sundarapandian, Zonal Deputy Tahsildar had affixed their signature in the seizure mahazar. The said Sundarapandian has been examined by the prosecution as PW-6. He had deposed that on 15.02.2008 when he was in duty, one Palanisamy, Tahsildar of Coimbatore (North) contacted him overphone and informed that the Village Administrative Officer Lakshmanan (the accused/appellant) had been arrested by the Police near Gounder Mill at Mettupalayam Road and asked him to go there and find out what has happened. Therefore, at 03.30 p.m., he went to the Gounder Mill bus stand at Mettupalayam Road and saw the accused and the Vigilance Officer behind the Ragam Bakery and he also saw the police preparing proceedings against the accused. He introduced himself to the Inspector. The Inspector informed that they have arrested the accused under Prevention of Corruption Act. PW-6 had positively stated that nothing was recovery from the accused in his presence. He was asked to sign in Ex.P5. So, he signed it. He came to know from the police that the accused has received Rs.1000/- as bribe. The prosecution has treated Pw-6 a hostile witness. He was permitted to cross examination by the prosecution but the witness has reiterated his version that he had not witnessed anything stated in the recovery mahazar.

19. The yet another suspicious circumstances in the case of the prosecution pointed out by the learned counsel appearing for the appellant is that according to the prosecution, the tainted money was received by the accused and kept in his pant pocket. During the post trap proceedings, the accused was asked to remove his pant, after providing a alternate cloth. But none of the prosecution witnesses clear in their evidence what was the alternate cloth given to the accused and from where it was procured.

20. While PW-3 Mr.S.Manohar has deposed that after the accused received the money and kept in his pant pocket, PW-2 gave pre-arranged signal to the Inspector and immediately, the Inspector and the trap party came to the spot he confirmed to them that the accused has received the money and identified the accused, who was about to leave the place in his motor cycle. Immediately, the trap laying officer took the accused and the other accompanying witness Mr.Vasudevan to the office of Personal Security Service at Dharani Building and conducted the phenolphthalein test. In his chief examination, he has not said anything about the nature of

alternate dress given to the accused before seizure of his pant for conducting phenolphthalein test. But, in the cross examination, he has deposed that new lungi was purchased nearby the shop and given to the accused. Whereas, the Trap Laying Officer (PW-15) in the cross examination say a new dhothi was given to the accused as alternate dress before seizure of his pant. When it was pointed out to the Trap Laying Officer about the omission of mentioning the nature of alternate dress provided to the accused in the recovery mahazar(Ex.P5), he had given a very evasive answer. This contradiction may not be very significant, if the evidence of the prosecution is strong enough to prove the case of demand, acceptance, and recovery, unfortunately, in this case, the alleged demand spoken by PW-2[defacto complainant] and stated in his complaint is not probable because, from the suggestions put to the witnesses as explanation, on 21.01.2008 when the revenue recovery order [Ex.P4] was issued for executing the Labour Court award in favour of the defacto complainant, the High Court of Madras had stayed the award passed by the Labour Court. While the official witness say that the revenue recovery order [Ex.P4] passed by the Tahsildar was sent by post to the concerned Village Administrative Officer, Revenue Inspector, PW-2 the defacto complainant claims that it was handed over to him personally and he delivered the order on 21.01.2008 directly to the Village Administrative Officer (appellant herein) and the Revenue Inspector.

21. From the evidence of PW-4 Mr.K.Govindarajan and P.W.8 Mr.S.Palanisamy, this Court could find that the revenue recovery order [Ex.P4] was wrongly despatched to Thudiyalur Revenue Inspector and later sent to Saravanampatti Revenue Inspector. The accused was serving under Saravanampatti Revenue Inspector. The accused by way of explanation suggested to PW-2 defacto complainant, PW-3 accompanying witness and PW-15 Trap Laying officer that after issuance of the revenue recovery order by the Tahsildar, the accused had visited the M/s Bullets Paper Boxes Company along with the defacto complainant on 25.01.2009. The company was identified by the defacto complainant, since the owner of the company was not available. They went again on 29.01.2008 to serve the recovery order. On that day they were informed about the stay granted by the High Court. Suspecting that the Village Administrative Officer is acting in favour of the Management, the defacto complainant, being an office bearers of Trade Union had given the false complaint and to fix the accused had placed the tainted currency on the seat of the two wheeler and fled from the scene of occurrence for the trap team to come

and catch him.

22. Thus, the accused had probablised that between 21.01.2008 the date on which the revenue recovery order passed and 11.02.2008 the date on which the appellant allegedly demanded bribe, the Village Administrative Officer has gone to the office of M/s Bullet Paper Boxes Company and learnt that the order could not be executed in view of the stay order passed by the High Court.

23. From the materials placed, this Court finds that at every stage from the complaint, pre-trap proceedings and recovery, the evidence of prosecution is not free from doubt and suspicion. The finding of the trial Court that the evidence of PW-2 is corroborated by the evidence of PW-3 is not factually correct. If really, PW-3 was present, when PW-2 gave money to the accused and heard the conversation between them, there should not have been major contradictions between the evidence of PW-2 and PW-3. While PW-2 says that the accused enquired him whether he had brought the money, in response he gave the money to him. The accused receive it, counted it, kept in his pant pocket and assured PW-2 that by Monday or Tuesday he will recover the amount, whereas, PW-3

had deposed that on seeing PW-2, the accused told him that he is waiting for him and assured that he will soon recover the money from the company and give it to him and asked to give the bribe money of Rs.1,000/-. This embellishment in the deposition of PW-3 makes this witness unreliable.

24. Yet another reason to disbelieve the case of the prosecution that PW-3 was present during the trap is the contradictions between him (PW-3) and the trap laying officer (PW-15) regarding nature of the alternate dress provided to the accused, after recovery of the pant from the accused. PW-3 would say in the cross examination that a checked lungi was given to the accused as alternate dress, but the trap laying officer says that the accused was given a new dothi. PW-6 Sundarapandian, who had deposed that he reached the trap scene, after the completion of trap, had deposed that he saw the accused wearing dothi.

25. On the cumulative assessment of the evidence placed before this Court and the explanation given by the accused by way of suggestion in the cross examination of the prosecution witnesses and the written

statement, this Court view that there is possibility of entertaining grudge against the Village Administrative Officer by the defacto complainant for delaying the execution of revenue recovery order. However, in view of the High Court stay order, which has been enclosed along with the written statement filed by the accused during 313 Cr.P.C., proceedings, this Court is of the opinion that on the day on which the revenue recovery order was passed i.e. on 21.01.2008 the High Court has stayed the execution of the award. The accused knew executing the recovery order was impossible on 11.02.2008. He would not have dare to demand bribe from a Union Leader promising recovery.

26. The explanation of the accused/appellant is that he and the defacto complainant went to the premises of M/s Bullets Paper Boxes Company on 25.01.2008 and 29.01.2008 is probable and grudge of the defacto complainant PW-2 against the appellant for delaying the process is also probable. The evidence of PW-2 regarding previous demand and partly unreliable evidence of PW-3 shadow witness coupled with hostility of PW-5 and PW-6 not supporting the recovery of the tainted money, this Court holds that the demand and acceptance of bribe money has not been proved beyond doubt by the prosecution and also the recovery as stated

by the prosecution bristles with infirmity and contradictions. Unless demands and acceptance is proved beyond reasonable doubt, the presumption under Section 20 of the Prevention of Corruption Act, 1988 cannot be drawn.

27. In the result, **this Criminal Appeal is allowed.** The judgment of conviction and sentence made in Spl.C.C.No.12 of 2011 Special Judge, Special Court for cases under Prevention of Corruption Act, Coimbatore, dated 29.12.2015 is hereby set aside. Fine amount if any paid by the accused shall be refunded to him. Bail bond if any executed by him shall be cancelled. M.O.1 series Rs.1000/- shall be confiscated to the State.

25.06.2018

Index:yes/no
Internet:yes/no
speaking order/non speaking order
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To

1. The Special Judge, Special Court for cases under Prevention of Corruption Act, Coimbatore,
2. The Inspector of Police, Vigilance and Anti Corruption, Coimbatore.
3. The Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.,

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Pre-delivery judgment made in
Criminal Appeal No.20 of 2016

25.06.2018