

Bail Slip

The Appellant/Accused namely Y.R. Manoharan, S/o Y.A. Raju was directed to be released on bail as per the order of this court dated 12.05.2016 made in CrI.M.P. No. 5607/2016 in CrI.A. No. 370/2016 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2018

Pronounced on : 13.02.2018

Coram:

The Hon'ble Dr. Justice G. Jayachandran

Criminal Appeal No. 370 of 2016

Y.R. Manoharan ... Appellant/Accused

/versus/

State by

The Inspector of Police,
Vigilance and Anti-Corruption,
Erode.

Crime No. 6/AC/2011-E.R. ... Respondent

Criminal Appeal is filed under Section 378(2) of Criminal Procedure Code praying to set aside the conviction and sentence made in Spl.C.C.No.2 of 2014 on the file of the learned Chief Judicial Magistrate and Special Judge, Erode dated 03.05.2016 and acquit the appellant by allowing the present criminal appeal.

For Appellant : Mr. B. Kumarasamy for
Mr. M. Sanjaiyan

For Respondent : Mr. P. Govindarajan, APP

J U D G M E N T

The appeal is arising out of the judgment of conviction rendered by the Chief Judicial Magistrate-cum-Special Judge, Erode, in Spl.C.C.No.2 of 2014, dated 03.05.2016.

2. The case of the prosecution is that while the appellant was working as Inspector of Local Fund Audit, Office of the Assistant Director of Local Fund Audit, Erode District, he

demanded illegal gratification from the defacto complainant and others to give audit report without pointing out the defects in the affairs of Kasipalayam Municipality for the accounting Year 2010-2011.

3. The case of the prosecution as unfolded through its witnesses is that when the accused person was auditing the accounts of Kasipalayam Municipality for the year 2010-2011 during the month of September 2011, he demanded a sum of Rs.3 lakhs from one Mr.Palanisamy, Executive Officer and a sum of Rs.1 lakh from Mr.Viswanathan, Sanitary Staff and Mr.Rajasekaran, Junior Assistant. He reiterated his demand with Mr.Viswanathan and Mr.Rajasekaran on 18.10.2011 and with Mr.Palanisamay on 28.10.2011. When Mr.Palanisamy requested to reduce the quantum of demand, the accused/appellant settled for Rs.3,50,000/- in toto and demanded initial payment of Rs.1 lakh by 01.11.2011 and told Mr.Palanisamy the money has to be delivered to him through Mr.Viswanathan.

4. Based on the written complaint of Mr.Viswanathan as alleged above, a case was registered by the prosecution and trap was laid. When the accused/appellant came to Chithode bus stand at about 20.40 hours on 01.11.2011, the defacto complainant gave Rs.1 lakh currency tainted with phenolphthalein to the accused person on his demand. The trap team, which took position near Chithode bus stand, immediately after getting the pre-arranged signal, went and interrogated the appellant and also recovered the tainted money from him.

5. The trial Court framed charge under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and tried the accused. The prosecution to prove the charge had examined 26 witnesses, marked 27 exhibits and 5 material objects. No witness was examined on behalf of the accused person.

6. After considering the material evidence placed by the prosecution, the trial Court held the accused/appellant guilty of the charge and sentenced him to undergo 2 years RI and to pay a fine of Rs.3000/- i/d to undergo 2 months RI for the offence under Section 7 of Prevention of Corruption Act, 1988 and identical sentence for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Period of sentence was ordered to run concurrently.

7. The accused/appellant being aggrieved by the sentence and conviction had preferred the appeal on the ground that the complaint alleging the demand of illegal gratification against the appellant is borne out of mala fide intention and ill-design conceived by PW-5[Mr.Rajasekaran] and PW-6[Mr.Manikandan] and executed through PW-1[Mr.Viswanathan]. The appellant, who was heading the team of Audit work comprising of Smt.Manimegalai and

Mr.Ponnusamy found several irregularities, defects and deficiencies including misappropriation in the accounts and works of PW-5[Mr.Rajasekaran] and PW-6[Mr.Manikandan]. On sensing the same, they have set up PW-1 who was sent by PW-5 [Mr.Rajasekaran] to assist the accused in his audit work. Under the pretext of submitting certain records in connection with audit, the money smeared with phenolphthalein kept concealed in a file was given to the accused and thereafter, the recovery of the same has been enacted.

8. The explanation given by the appellant immediately after the trap was not recorded by the trap laying officer. The site plan does not indicate the place of recovery. Whereas, PW-2 [Mr.Lakshmanan] and PW-24 [Ms.Santhakumari] and PW-25 [Mr.Murugesan] who are supposed to have witnessed the receipt of tainted money, have given contradictory statements in this regard. The defacto complainant/PW1 is a Sanitary Worker. Being a basic servant, he cannot be found fault for any defect, deficiency, irregularity and misappropriation in the accounts maintained by the Municipality. While so, the theory of the prosecution that the appellant demanded Rs.1,00,000/- from PW-1 [Mr.Viswanathan] is an imaginary allegation and just to add flavour to the false allegation.

9. The role of the appellant as a member of the audit team is to point out the defects by way of audit remarks which have to be rectified by the concerned department. In fact, the appellant after auditing, had prepared report indicating several irregularities in the construction works, irregularity in the improvement scheme, non-assessment of tax for the new building and vacant sites, the violation in promoting Mr.Rajasekaran, Record clerk as Junior assistant, non-assessment/recovery from cellphone tower owner and non-recovery of professional tax etc., The draft audit report containing all the above remarks had been recovered from his computer and marked as Ex.P16.

10. While the fact being so, there is no truth in the allegation made by PW-1[Mr.Viswanathan] that he demanded a sum of Rs. 4 lakhs to cover up all the misleads in the municipality affairs and give a flawless audit report. The trial Court, instead of disbelieving the evidence of PW-1[Mr.Viswanathan] who is a tainted witness and admittedly suspended staff for forgery, has heavily relied upon his evidence and misconstruing that PW-1 [Mr.Viswanathan] had offered bribe because he had suffered suspension. To get rid of the hard ship, the demand was made by the appellant. Whereas the suspension was not prior to the trap but it was subsequent to the trap for alleged forgery. Thus, by wrong appreciation of the evidence, grave miscarriage of justice has occurred and hence, the sentence of the trial Court has to be set aside.

11. In support of his contention, the learned counsel appearing for the appellant relied upon the following judgments:

1.Judgment of this Court in Banarsi Dass v. State of Harayana reported in 2015(3) MWN (Cr.) 346

2.Judgment of Gujarat High Court in Ajitkumar Somnath Pandya v. State of Gujarat reported in 1992(1) Crimes 488

3.Judgment of this Court in R.Gunalan & another v. The State by Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Erode reported in 2012-1-L.W.(CrI.) 303

4.Judgment of Madurai Bench of Madras High Court in S.P.Paulraj v. State rep.by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Rmanathapuram reported in 2009(2)MLJ (CrI)105

5.Judgment of the Hon'ble Supreme Court in Sri Rabindra Kumar Dey v. State of Orissa reported in (1976) 4 Supreme Court Cases 233

6.Judgment of the Hon'ble Supreme Court in State of Orissa v. Chandrika Mohapatra and others reported in (1976) 4 SCC 250

7.Judgment of the Hon'ble Supreme Court in Banarsi Dass v. State of Harayana reported in (2010)3 MLJ (CrI) 132(SC)

8.Judgment of this Court in D.Balasubramanian v. State by Inspector of Police, SPE/CBI/ACB, Chennai reported in 2011-2-L.W.(CrI.)761

9.Judgment of this Court in Karikalan and others v. Food Inspector, G.Pakkrisamy, Food and Drugs Administration, Government General Hospital, Karaikal reported in 2011-2-L.W.(CrI.) 771

12. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved the case beyond reasonable doubt through PW-1 [Mr.Viswanathan] whose evidence is cogently corroborated by the independent witness PW-2[Mr.Lakshmanan]. The demand of illegal gratification of Rs.3 lakhs made by the accused on 14.10.2011 with PW-4 [Mr.Palanisamy] the Then Executive Officer and the demand of Rs.1 lakh as illegal gratification with PW-1 [Mr.Viswanathan] and PW-5[Mr.Rajasekaran] is spoken by the individual concern and corroborated by the other witnesses. The subsequent demand on 18.10.2011 with PW-1[Mr.Viswanathan] to pay Rs.1 lakh and the threat of writing adverse audit report, if demand not conceded is spoken to by PW-1[Mr.Viswanathan]. PW-4

[Mr.Palanisamy] has deposed that he met the accused on 28.10.2011, he reiterated his earlier demand and demanded Rs.3.5 lakhs from PW-1, PW-4 and PW-5 put together.

13. On a conjoint reading of evidence of PW-1, PW-4 and PW-5 which are independently reliable and also corroborated by the other witnesses, the demand of illegal gratification is well established. The complaint Ex.P1, entrustment mahazar-Ex.P3 and recovery mahazar Ex.P4 fortify the case of the prosecution, which has also been accepted by the trial Court. The accused has requested PW-4[Mr.Palanisamy] and PW-5[Mr.Rajasekaran] to give the bribe money through PW-1[Mr.Viswanathan], since PW-1 [Mr.Viswanathan] was deputed to assist the accused person in his audit work. So, it is not that as a Sanitary worker, he has nothing to do with the audit conducted at Kasipalayam Municipality. The subsequent suspension of PW-1[Mr.Viswanathan] for forgery cannot be a reason to doubt the veracity of his evidence. When the prosecution has proved the demand as well as acceptance of illegal gratification, it is for the accused to prove otherwise. The arrival of the accused person to Chithode bus stand, demand and acceptance of money were all spoken to by the eye witnesses.

14. While so, the presumption under Section 20 of the Prevention of Corruption Act, 1988 has to be drawn that the money received by the appellant is towards illegal gratification. Minor discrepancies, which is quite natural due to efflux of time and fading of memory, cannot be a ground to acquit the appellant. Apart from the ocular evidence, documentary evidence such as mahazar for recovery, scientific expert opinion and his report also led support to the prosecution case. Therefore, the trial Court's finding and sentence have to be confirmed.

15. In support of his submission, the learned counsel appearing for the respondent relied upon the following judgments:

1.Durai Murugan v. DSP, V&AC, Vellore
reported in 2013(1) CWC 136.

2.M.Narsings Rao v. State of Andhra Pradesh reported in 2001 CrI.LJ 515 (Supreme Court).

3.State of Andhra Pradesh v. C.Uma Maheswara Rao & another reported in 2004 Criminal Law Journal 2040

16. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the material on record.

17. Point for consideration:

Whether the prosecution has proved the receipt of money by the appellant as illegal gratification?

18. As per the complaint of Mr.K.Viswanathan[PW-1], Sanitary Worker of Kasipalayam Municipality, the Annual Audit of the Municipality for the year 2010-2011 was under progress since 19.09.2011 by team of auditors led by Mr.Y.R.Manoharan and the other members of the team Mr.R.Ponnusamy and Smt.Manimegalai. Mr.Y.R.Manoharan auditing the accounts of the Municipality pertaining to the Engineering Work viz., Road, Drainage, Water Supply, Mini Bridge, Metal Road etc. While the other two officers namely, Mr.Ponnusamy and Smt.Manimegalai were given to audit expenditure vouchers and building permission, house tax respectively, by 21.10.2011 both Mr.Ponnusamy and Smt.Manimegalai completed the work and submitted the report to Mr.Y.R.Manoharan. Whereas Mr.Y.R.Manoharan continued to do the audit work. While so, on 13.10.2011 Mr.Y.R.Manoharan told him to inform Mr.Palanisamy, Executive Officer to meet him to talk about the money transaction since he is about to complete the audit. Mr.Viswanathan[PW-1] in turn informed the matter to Mr.Palanisamy. On 14.10.2011 Mr.Palanisamy met Mr.Y.R.Manoharan at Kasipalayam Municipality Office. After meeting Mr.Y.R.Manoharan, Mr.Palanisamy told Mr.Viswanathan that Mr.Y.R.Manoharan has pointed out the irregularity in the tax collection, lay out approval, house tax assessment and execution of construction work. By pointing out auditing the irregularities in his report he can prevent him from retiring. If the officers of concern Section meet him and pay bribe he will close the matter without problems.

19. It is the specific allegation made in the complaint that Mr.Y.R.Manoharan demanded Rs.3 lakhs from Mr.Palanisamy and Rs.1 lakh from Mr.Rajasekaran and Mr.Viswanathan, on 14.10.2011 when Mr.Palanisamy met Mr.Y.R.Manoharan. So, what PW-1 [Mr.Viswanathan] heard through Mr.Palanisamy regarding demand of illegal gratification is only on hearsay.

20. It is the further case of the prosecution that on 18.10.2011 when PW-1[Mr.Viswanathan] met Mr.Y.R.Manoharan, he was threatened by Mr.Y.R.Manoharan that if he and Mr.Rajasekaran do not pay Rs.1 lakh together as bribe, he will record audit remarks to take action against them. It is further case of the prosecution, as per the complaint, Mr.Y.R.Manoharan was frequently threatening PW- 1 [Mr.Viswanathan] demanding bribe. Though several incidents of demand was made to other persons like Mr.Palanisamy and Mr.Rajasekaran, the complaint has been given by Mr.Viswanathan, who admittedly was on medical leave since 24.10.2011. It is spoken by PW-4[Mr.Palanisamy] and PW-5[Mr.Rajasekaran] that

they have chosen PW-1[Mr.Viswanathan] to give the complaint since the accused has requested them to give bribe money through PW-1[Mr.Viswanathan].

21. PW-4[Mr.Palanisamy] to whom the accused person demanded bribe for the first time on 14.10.2011, in his deposition has narrated the manner in which he was called by the accused to meet him on 14.10.2011 and the demand of Rs.3,00,000/- from him and Rs.1 lakh each from Mr.Rajasekaran and Mr.Viswanathan. He has also deposed about the subsequent meeting with the accused on 28.10.2011 and when he met the accused on that day, the accused has scolded him for delay in paying the bribe money. On that day negotiation took place and the appellant has agreed to Rs.3,50,000/- by reducing the demand by Rs.50,000/-. Thereafter, PW-1[Mr.Viswanathan], PW-4 [Mr.Palanisamy] and PW-5 [Mr.Rajasekaran] from whom the demand has been made by the accused directly and through others have decided to lodge the complaint and to lay the trap. Mr.Viswanathan[PW-1] and Mr.Rajasekaran[PW-5] have put together given Rs.50,000/- and Mr.Palanisamy has given Rs.50,000/-. Totally a sum of Rs.1,00,000/- has been entrusted to PW-1[Mr.Viswanathan] for use of trap proceedings. Though in the cross examination of PW-1 [Mr.Viswanathan], PW-4[Mr.Palanisamy] and PW-5[Mr.Rajasekaran] the question has been posed regarding the source of money, the answer elucidated does not impeach the credibility of the witnesses, how they mobilized the money to lay the trap.

22. It is the proven fact that on 01.11.2011 at the junction of Chithode Four Road, Rs.1,00,000/- has been given by PW-1 [Mr.Viswanathan] to the appellant and the appellant had received the same. In this regard, the evidence of PW-1[Mr.Viswanathan] is very categorical and precise. When PW-1 [Mr.Viswanathan] went to Kasipalayam Municipality office on 01.11.2011 with tainted money at about 05.30 p.m., the accused was not in the office. On enquiry, PW-1[Mr.Viswanathan] understood that the accused has left the office early.

23. Thereafter, over phone he has contacted the accused, who had informed him that he will come to Chithode Four Road Junction at 07.00 p.m. and collect the money. Therefore, PW-1 [Mr.Viswanathan] along with the trap team had gone to Chithode Four Road Junction. Since the accused did not turn up at 07.00 p.m. again PW-1[Mr.Viswanathan] called the accused over phone. The accused has informed that he will come by 8'0 clock. Therefore, the trap laying team and PW-1[Mr.Viswanathan] were waiting near a fruit stall. Further, the third time again PW-1 [Mr.Viswanathan] called the accused at 08.00 p.m., and got confirmation that he will come to the spot by 08.30 p.m. At 08.30 p.m., the accused has called PW-1[Mr.Viswanathan] after reaching Chithode Four Road Junction and told PW-1 [Mr.Viswanathan] that he is waiting for PW-1[Mr.Viswanathan] near

Parasakthi Medical shop. On seeing him, he had demanded the money. On his demand, PW-1[Mr.Viswanathan] has handed over M.O.1 series currency of Rs.1,00,000/- smeared with phenolphthalein. The accused has received the money and counted at random using both the hands and kept in his left side pant pocket. In the cross examination, PW-1 [Mr.Viswanathan] has said that the tainted money smeared with phenolphthalein was kept in a polythene cover. Immediately after the demand, he took the currency from the polythene cover and gave it to the accused and threw away the polythene cover.

24. The explanation given by the accused in cross examination of PW-1[Viswanathan] as a suggestion that PW-1 [Mr.Viswanathan], on the instruction of District Superintendent of Police called the accused over phone and told him that a post from AD office has come to the accused and asked him where he can meet him and hand over the post. In response to that, the accused informed him that presently he is in Gowinthanpadi and he may be crossing Chithode four road only after 08.30p.m. If positively he will collect the post on that day or else he can deliver the post on the next day at Municipality Office. It is also suggested to the witness that the accused came to Chithode four road junction in a two wheeler and not in the bus. Further, the accused parked his scooty near Chithode four road, PW-1[Mr.Viswanathan] gave polythene cover saying that it contains the letter addressed to him and immediately, the trap team caught hold him. By smearing phenolphthalein over the polythene cover and handing over it under the pretext of some letter. The accused was made to handle the cover and got himself contacted with phenolphthalein. It is also suggested to the witness, as a defence that it is the habit of Kasipalayam Municipality staff to lodge a false complaint against the audit team so as to escape their misdeeds and misappropriation.

25. On perusing the evidence, the following questions stare before this Court nagging, for which the prosecution has not come out with clear reasoning.

26. When the alleged demand of bribe of Rs.3 lakhs made by the accused with Palanisamy, (former Executive Officer of Kasipalayam Municipality) on 14.10.2011, why he had not given the complaint immediately, why he and PW-5 took the help of PW-1, who was admittedly on medical leave during the said period.

27. It is the specific admission by PW-11[Mr.Gopinath] who was the Executive Officer of Kasipalayam Municipality during the trap period that PW-1[Mr.Viswanathan] was on medical leave from 25.10.2011 to 07.11.2011. A person, who was on medical leave, had actively participated in the trap proceedings by initiating the complaint alleging demand of bribe. When the major accusation of irregularity is against PW-4 [Mr.Palanisamy] and

the first demand was with Mr.Palanisamy, the reason for PW-4 refraining from lodging the complaint is left unanswered.

28. No doubt, any person can set criminal law in motion, but in this case, the prosecution has tried to make out the case that the accused person demanded Rs.1 lakh from PW-1 and PW-5 together. When PW-1 as Sanitary Assistant and PW-5 as a Junior Assistant, why should they pay such a huge sum as bribe to the internal auditor and what could be the quid pro quo for the said bribe. If at all any audit objection or parawar remarks is made by the accused, it is going to affect the career of the officials concerned. But those irregularities definitely could not have any bearing on the menial staff.

29. It is also the specific allegation in the complaint that the accused whenever met PW-1[Mr.Viswanathan], he was demanding bribe and threatening him. Why should PW-1[Mr.Viswanathan] contribute Rs.25,000/- for the trap proceeding, when he is not concerned with the audit? These loose ends couple with the fact that the accused had almost completed his audit work and ready with draft report, which has been retrieved from the computer, which has been marked as Ex.16. The draft report contains the irregularity and error in the financial administration of Kasipalayam Municipality. This only go to show that there was some under laying animosity between PW-4[Mr.Palanisamy] and PW-5 [Mr.Rajasekaran] on one part and the accused on another part.

30. It is admitted by PW-4 [Mr.Palanisamy] that the complaint was brainchild of collective discussion of PW-4 [Mr.Palanisamy] and PW-5[Mr.Rajasekaran]. But the complaint has been lodged by PW-1[Mr.Viswanathan], who was not only on medical leave but very least connected with the affairs of the audit. The said witness is found to be person of unworthiness due to the fact that he was caught for forgery and placed under suspension.

31. It is not that the evidence of such person should be thrown without any consideration, but the evidence of such person should be looked with suspicious. More particularly as pointed out earlier, when he is no way connected with the audit except being deputed to assist the accused person, any adverse remark in the audit report is not going to have any baring in his function as sanitary assistant. The draft report prepared by the accused person also does not indict him away. In such circumstances, he joining the league of others and contributing Rs.25,000/- does not make sense.

32. PW-11[Mr.Gopinath] who was the Executive Officer of Kasipalayam Municipality at that relevant point of time has

deposed that during the audit, the accused/appellant used to contact him and complaint about the delay in submitting the register for auditing. PW-11[Mr.Gopinath] in turn used to contact officers concerned and advised them to co-operate for the audit by presenting the required registers.

33. PW-10 [Mr.Athiyappan], Assistant Director of Local Audit in his evidence has deposed that the draft audit report prepared by the appellant was retrieved from the computer and the same is marked as Ex.P16 which consists of 94 pages wherein audit paras 1 to 20 has been identified. The reports of the other two auditors namely, Smt.Manimegalai and Mr.Ponnusamy are also marked as Exs.P9 and P13 respectively.

34. Taking note of these facts, it could be easily understood that when the appellant took up the task of auditing at Kasipalayam Municipality, he had lack of co-operation from the staff, he had reported the same to the Executive Officer (PW-11). Thereafter, there was some improvement. PW-1 [Mr.Viswanathan] was deputed to assist him to handle the files but he has gone on medical leave from 24.10.2011. All of sudden, he met the accused only on 01.11.2011 but prior to that, he claims he had telephone conversation with the accused. What transpired during the conversation is spoken by PW-1[Mr.Viswanathan]. However, the attending circumstances renders his evidence tainted and unreliable.

35. Though Chithode being the native of PW-1[Mr.Viswanathan] which is a small town he in his deposition has said that he searched for Parasakthi medicals for handing over the bribe money to the accused which is not believable. Further, the inconsistency in the case of the prosecution regarding the place of recovery and place of preparation of mahazar, phenolphthalein test, drawing of site plan though appears to be very minor, it gains significance in the light of the facts that the trap spot being the public place and according to the prosecution immediately after the trap, the accused was taken to nearby primary school with permission of a watchman of the school and proceedings were prepared in the primary school premises. The eye witness has given his own version regarding site of the trap and site of preparation of mahazaar. Though rough sketch marked as Ex.P25 indicates the spot opposite to Parasakthi Medical as SOC, in the said sketch this Court could not find the primary school where the mahazar alleged to have prepared. Though in the mahazar it is mentioned that the said school is 500 metres from Parasakthi medicals towards west, the site of preparation of mahazar is unfound. The embellishment found in the case of the prosecution couple with incredible version of PW-1[Mr.Viswanathan] renders the finding of the trial Court unsustainable. Hence, the judgment of the trial Court is liable to be set aside.

36. In the result, the criminal appeal is allowed. The judgment of conviction passed by the learned Chief Judicial Magistrate and Special Judge, Erode in Spl.C.C.No.2 of 2014 dated 03.05.2016 is hereby set aside. Bail bond if any executed by the appellant is cancelled. Fine amount if any paid by the appellant shall be refunded to the appellant. The appellant is at liberty unless his presence is required in connection with any other case.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

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

+1 CC to Mr.M. Sanjaiyan, Advocate sr 70851.

Cr1.A.No.370 of 2016

KJ(CO)
SP(09/03/2018)

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