Bail Slip

The Appellant/Accused the deceased R.Kuppuraj, S/o.Ramanandham was directed to be released on bail as per order dated 6.7.2016 in Crl.MP.No.7208/2016 in Crl.A.No.490 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.490 of 2016

R.Kuppuraj(deceased)
Sargunam
W/o Late Kuppuraj(Deceased Appellant)

(Legal heir of the deceased appellant is impleaded as per the order dated 15.02.2018 made in Crl.M.P No.2026 of 2018 in Crl.A.No.490 of 2016)

...Appellant

Vs.

State rep.by
The Inspector of Police,
Vigilance and Anti-corruption,
Chennai City-V, Chennai

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside judgment dated 14.06.2016 made in C.C.No.86 of 2011 on the file of the Special Court for Cases under Prevention of Corruption Act at Chennai.

For Appellant : Mr.P.Kumaresan
For Respondent : Mr. K.Prabakar
Additional Public Prosecutor

JUDGMENT

This appeal is arising out of the judgment of conviction and sentence imposed by the Special Court for Cases under Prevention of Corruption Act, Chennai in C.C.No.86 of 2011 dated 14.06.2016.

2 The brief facts of the prosecution case is that Kuppuraj while working as Assistant Engineer, Division-74, Zone-5, Corporation of Chennai had demanded at Rs.10,000/- from R.Thiyagarajalu as illegal gratification to process road cutting permission, which is necessary for providing metro water supply sewerage connection to him. The alleged demand was made on 01.04.2009. Tr.Thiyagarajalu, who was not inclined to give bribe to get his application processed, had given a complaint to the Vigilance and Anti-Corruption Department at Chennai, which was received at 17.30 hrs on 01.04.2009 and the case was taken up for investigation.

3 Tr.K.Jeevanantham, Inspector of Police, Vigilance and Anti-Corruption Department has registered the First Information Report. On 02.04.2009 at 7.30 hrs in the presence of two official witnesses namely V.Ranganathan and T.M.Govindaraj, he has demonstrated the significance of phenolphthalein test. The bribe money of Rs.10,000/- produced by the *defacto-complainant* was smeared with phenolphthalein. After noting the currency number, Entrustment Mahazar was prepared in the presence of the said witnesses and tainted currency was handed over to the defacto-complainant. The defacto-complainant along with accompanying witnesses, Thiru Govindaraj and Thiru. Ranganathan went to the office of the appellant at Chennai 106, MMDA Colony, No.13, MGR Nagar, 3rd street at about 13.45 hrs. On receipt of prearranged signal from the defacto-complainant, the trap team had entered the room of the deceased appellant at 13.55 hrs and had recovered the tainted money found on the table of the appellant kept in kerchief and concealed under a file. After conducting phenolphthalein test, the appellant has been arrested.

4 On completion of the investigation, final report was filed against the deceased appellant for the offence under Sections 7 and 13(1)(d) of Prevention of Corruption Act, after obtaining sanction to prosecute the accused/appellant.

5 To prove the charges, the prosecution has examined 7 witnesses. 12 Exibits and 5 material objects were marked. On the side of the defence 1 witness and 3 Exibits were marked.

6 The trial Court has held the accused guilty of both the charges and convicted under Section 7 of Prevention of Corruption Act and sentenced to undergo one year Rigorous Imprisonment and fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment; and convicted under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act and sentenced to undergo two years Rigorous Imprisonment together with fine of Rs.1,000/-, in default to undergo another three months Rigorous Imprisonment.

7 The appellant aggrieved by the judgment of conviction and sentence, had preferred the appeal, but before the appeal is taken up for disposal, he lost his breath and his wife Sargunam has filed a petition to implead herself to continue the appeal and the same was allowed by this Court vide order dated 15.02.2018 made in Crl.M.P.No.2026 of 2018 in Crl.A.No.490 of 2016.

8 The learned counsel appearing for the appellant would submit that the case of the prosecution is bristled with several infirmities and irregularities and despite that the trial Court has erroneously held the deceased appellant guilty. The genuineness of the complaint itself is baseless

and the malafide intention of the complainant had been exposed during cross-examination and in spite of that, the trial Court has delivered an erroneous judgment which requires interference.

9 To buttress the submission the learned counsel for the appellant would submit that the case of the prosecution is that the *defacto-complainant* R.Thiyagarajalu, PW.2 had applied for water supply and sewerage connection with the Chennai Metro Water Supply and Sewerage Board. On 16.02.2009 he paid Rs.15,000/-. When he approached Metro Water Assistant Engineer, he instructed him to meet the accused/deceased appellant at MMDA Colony on 01.04.2009, who was the Corporation Executive Engineer, in-charge of Division-74, Zone-V. When he met the accused/deceased appellant on 01.04.2009 at 2.00 p.m., he confirmed that the papers received and to process he must be given illegal gratification of Rs.15,000/-. Later, he reduced the bribe demand to Rs.10,000/- and told without bribe he will not get water connection.

10 Based on this alleged demand of illegal gratification, the complaint was given by the *defacto-complainant* to one Mr.Jeevanandan, Inspector of Police, Vigilance and Anti-Corruption. The lacuna in the prosecution case would be well found from the complaint itself and the manner in which the FIR being registered.

11 The learned counsel appearing for the appellant, would pointed out that the prosecution has not placed any material before the Court to show that PW.2 has remitted Rs.15,000/- on 16.02.2009 for water sewerage connection and the only piece of evidence relied by the prosecution is Ex.P.6., which is a letter purporated to be emanated from Assistant Engineer, CMWSSB, Division-74, Zone-V, Corporation of Chennai. The learned counsel for the appellant would point out that this letter does not carry any reference number or carry any endorsement that this was received by the addressee, Assistant Engineer, Division-74, Zone-V, Corporation of Chennai in the manner known to law. In support of his submission, the learned counsel for the appellant would also point out the admission of PW.1 in his cross-examination that all important communication, which requires some order, will bear a reference number, which is missing in Ex.P.6. Furthermore, the learned counsel for the appellant would also point out the contradiction between the witnesses regarding the source from which Ex.P6 was recovered.

12 It is submitted by the learned counsel for the appellant that the manner in which the tainted money recovered from the possession of the accused/deceased appellant is also doubtful. Mere phenolphthalein test found positive in the hands of the accused will not give rise to presumption that the tainted money on the table of the accused was received by him as an illegal gratification. There is no material to show

that there was any application for providing cutting permission or the deceased appellant was in-charge of or responsible for according such permission. It is also pointed out by the learned counsel for the appellant that on the very same day of the trap, the *defacto-complainant* was provided with water connection. There is no explanation by the Trap laying officer or the Investigating officer or any prosecution witness as to how without an application for water connection and without estimation for road cutting and remittance, water connection was provided to PW.2 immediately after the trap. The learned counsel for the appellant would also rely upon the evidence of Ex.P.6, the recital would show that the Corporation received a letter seeking cutting permission for providing water and sewerage connection to Door No.22, Old No.15/1, Bharathi Street, Choolaimedu. DW.1 has deposed, Chennai Corporation received fees only on 30.04.2009 by way of demand draft. This payment made nearly one month after water connection, speaks volume about the manner in which PW.2 and trap laying officer had fixed the accused/deceased appellant. The *defacto-complainant*, PW.2 a retired CRPF personnel who have close proximity with the police, in order to get water and sewerage connection expeditiously bypassing the requirements, had designed a plan to give a complaint and had got the water connection on the same day after the trap.

13 Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the procedure for providing water and sewerage connection is spoken by PW.4, which is self explanatory and any person, who needs water and sewerage connection has to make an application to the CMWSSB and if there is any road cutting is required to provide connection, letter addressed to the Corporation seeking their estimation has to be made. Once the estimation is received that amount will be collected from the applicant and thereafter, permission would be sought from the Corporation. Ex.P6 is the letter from the sewerage board to the Corporation seeking road cutting permission. Without road cutting permission sewerage Board cannot proceed with the proposed water supply.

14 In this context, when PW.2 approached Assistant Engineer of Sewerage Board on 01.04.2009, he had informed about this process and directed PW.2 to contact the accused/deceased appellant, who was at that time, Assistant Engineer, Corporation of Chennai in-charge of Zone-V, Division-74. Knowing fully well that without cutting permission PW.2 cannot get water supply, the accused has demanded initially Rs.15,000/- later reduced to Rs.10,000/- also warned the *defacto-complainant* that if he does not pay the money as demanded, he will not get water connection even after six months. This aggravated PW.2, who approached the Vigilance Department and lodged a complaint Ex.P2. PW.6-Jeevananthan had registered the FIR (Ex.P8) in the presence of two responsible official witnesses. He has conducted the trap

proceedings. Ex.P6, the communication from the Assistant Commissioner, Sewerage Board to Assistant Commissioner, Corporation of Chennai, recovered during trap proceedings is sufficient to show that there was an application and process.

15 Non production of application for water connection and receipt for payment of Rs.15,000/- to the said process on 16.02.2009 is not fatal to the prosecution since the centric of the case, namely demand and acceptance of illegal gratification by the accused/deceased appellant, which has been proved by the prosecution through the complaint of the PW.2 marked as Ex.P2. reiterated in the oral evidence of PW.2. The recovery of tainted money and Ex.P6 proved through PW.3 and trap laying officer PW.6. The receipt of bribe is proved through recovery of tainted money of Rs.10,000/- covered in the kerchief of the accused and kept beneath the file. The witness for the recovery as well as the recovery mahazar establish that the tainted marked currency were found in possession of the accused/deceased appellant. The number found in the Entrustment Mahazar found tallied with number found in the money recovered. This facts was reduced in writing in recovery Mahazar marked as Ex.P4. When the accused appellant is unable to give plausible explanation for the recovery of money and the presence of phenolphthalein found in his hand, which was tested on the spot examination of sodium carbonate phenolphthalein test as well as the sample collected and tested in the laboratory and found positive through Ex.P7, Chemical Analysis report, the case of the prosecution is well established that the accused has demanded and accepted Rs.10,000/- for extraneous consideration by abusing his official position.

16 It is submitted by the learned Additional Public Prosecutor that the trial Court has gone through the evidence meticulously and after being convinced that the money has been received as illegal gratification, had convicted the deceased appellant under Section 7 and 13(1)(d) of the P.C.Act. Having proved the demand and acceptance presumption against the appellant under Section 20 of Prevention of Corruption Act attracts which is mandatory for the Court once the demand and receipt of illegal gratification, is proved by the prosecution. The trial Court had considered the explanation given by the accused and has held that the explanation of the defence is not plausible to rebut the presumption. The recovery of M.O.1 series (Rs.10,000/-) and Ex.P6 from the possession of the accused, which is the proof for application pending for road cutting permission. The absence of explanation for the receipt of the tainted money, give rise to presumption of guilty.

17 Heard the rival submission made by the respective counsels. The point which requires interference of the trial Court judgment by this Court is that mere recovery of tainted money from the possession of the accused person is not

sufficient to presume his guilty under Section 7 of Prevention of Corruption Act. The prosecution should have produced to show materials that this money was received by the accused as an illegal gratification. In this case, there is no material evidence to show that there was any necessity for the *defacto-complainant*-PW.2 to meet the accused/deceased appellant and the deceased appellant to demand gratification. As pointed out by the learned counsel for the appellant, where Ex.P6 was taken, whether from the file kept by the accused or in the bureau of the accused itself is not certain.

18 On perusal of Ex.P6 marked before the trial Court, this Court finds that it is a certified photo copy. This photo copy certified by PW.4, is not legible. The learned Additional Public Prosecutor would fairly produce the certified photo copy of the original made by PW.4, which is in the file of prosecution. Perusal of the original certified copy also not clear. This Court could not find any signature in the letter marked Ex.P6. Admittedly no evidence to show when this letter reached the Corporation from Sewerage Board and this Exibit does not provide any information about demand of fee.

19 Yet another factor which has to be taken note is that PW.2 admits that he got the water connection on 02.04.2009 from Metro water, Chennai immediately after the trap. If the accused has demanded money to prepare estimation and get permission for cutting the road, how come without such permission Metro water was able to provide water connection to PW.2 on the same day of trap. This unexplained lacuna in the prosecution case throws suspicious in their case which necessarily requires explanation and benefit of doubt is be awarded to the accused/deceased appellant.

20 Non production of application payment receipt dated 16.02.2009, non production of material to show that PW.2 deposit of Rs.15,000/- on 16.02.2009; non production of estimation which is pre-requisite for providing water connection and the admission by PW.2 himself that he received water connection on 02.04.2009 itself, cumulatively would show that the case of the prosecution cannot be genuine.

21 Therefore, the Criminal Appeal is allowed. The judgment of the trial Court made in C.C.No.86 of 2011 is set aside and fine amount if any paid, shall be refunded to Sargunam, the legal heir of the deceased appellant, who has followed up the appeal.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1 The Special Judge,
Special Court for Cases under
Prevention of Corruption Act,
Chennai.

2 The Inspector of Police,
Vigilance and Anti-corruption,
Chennai City-V, Chennai

3 The Public Prosecutor,
High Court, Madras.

4 The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr.P.Kumaresan, Advocate SR.NO.49136

VGI(CO)
sm:21.8.2018

Crl.A.No.490 of 2016