

BAIL SLIP

The Appellant/Accused namely Vinayagaswaminathan (Crl.A.607/08) be and hereby was directed to be released on bail under Court Order dated 14/08/2008 in MP.1/08 in Crl.A.607/08)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.01.2018	Pronounced on: 31.01.2018
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Coram:

The Honourable Dr. Justice G. Jayachandran

Criminal Revision Petition No. 1629 of 2008

&

Criminal Appeal No. 607 of 2008

1. Ramachandran ... Petitioner/P.W.1
in Crl.RC.No.1629 of 2008

2. Vinayagaswaminathan ... Appellant/Third Accused
in Crl.A.No.607 of 2008

/versus/

1. Rajendran

2. State, rep. by The
Inspector of Police,
Anti-Corruption & Vigilance Department,
Nagapattinam District. ... Respondents/Complainant
in Crl.RC.No.1629 of 2008

3. The State, Rep by
Inspector of Police,
Vigilance & Anti Corruption
Nagapattinam District. ... Respondent/Complainant
in Crl.A.No.607 of 2008

PRAYER in Crl.RC.No. 1629 of 2008: Criminal Revision Petition is filed under Section 397 r/w 101 Criminal Procedure Code, to set-aside the judgment made in Special C.C.No.16 of 2006 dated 25.07.2008 on the file of the Special Court for Anti-Corruption Cases, Nagapattinam.

PRAYER in Crl.A.No.607 of 2008: Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code r/w Section 27 of Prevention of Corruption Act, to set aside the conviction and

sentence passed by the Special Court for Prevention of Corruption cases [Chief Judicial Magistrate], Nagapattinam dated 25.07.2008 made in Special C.C.No.16 of 2006

For Petitioner : Mr. D.Veerasekaran
in Crl.RC.No.1629 of 2008

For Appellant : Mr. S.Sounthar
in Crl.A.No.607 of 2008

For R2 : Mr. P.Govindarajan,
in Crl.R.C.No.1629
Additional Public Prosecutor (Criminal Side)

For Respondent 1 : Mr.B.Mahendra Naidu in
Crl.RC.1629/08
: NA in Crl.A.607/08

JUDGMENT

These Crl.A.No.607 of 2008 and Crl.R.C.No.1629 of 2008 are directed against the judgment of the Special Court-cum-Chief Judicial Magistrate, Nagapattinam in Special C.C.No.16 of 2016 dated 25.07.2008.

(i). The Crl.A.No.607 of 2008 is preferred by the 3rd accused who had been found guilty for offence under Section 7 and 13 (2) (1) of Prevention of Corruption Act.

(ii). The Crl.R.C.No.1629 of 2008 is filed by Thiru Ramachandran the defacto complainant against the acquittal of A1 [Rajendran] and A2 [Boominathan] for offences under Sections 7 and 13 (1) (d) r/w 13(2) of Prevention of Corruption Act and under Section 109 of I.P.C.

2. The case of the prosecution has spoken by its witnesses is as under:

One Tmt.Kathaiyeeammal resident of Palliyamulai, Thirukkuvalai Taluk to feed her bricklin illegally felt down a grown up tree in Poramboku land adjutant to her land. On information S.Rajendaran [Village Administrative Officer], M.Boominathan [Village Assistant] and P.N.R.Vinayagaswaminathan [Revenue Inspector] visited her village on 27.04.2005 and found the illegally felling of tree. Therefore, they informed Dakshinamoorthy son of Kathaiyeeammal to meet them in the Office. Ramachandran [PW.1] who is another son of Kathaiyeeammal, was informed about this by his brother

Dakshinamoorthy [PW.5] when he came home after his Office hours.

3. Meanwhile, the Village Administrative Office Rajendran [A1] called Ramachandran [PW.1] over phone and asked to meet him at the office on 28.05.2005 to settle the matter amicably. Accordingly, Ramachandran [PW.1] went to the Office of VAO, met Rajendran (A1) and Boominathan (A2), they informed him the act of Kathaiyeeammal will invite penalty of Rs.40,000/- so advised him to settle the matter amicably, admitting illegal felling of tree and they will see that no action is taken against his mother. To help him they demanded Rs.3,000/- as illegal gratification which later reduced to Rs.1,500/-.

4. Since Ramachandran (PW.1) was not inclined to give bribe money. He had approached the Vigilance and Anti Corruption Police, Nagapattinam on 02.05.2005 and he had preferred a complaint against Rajendran[A1] and Boominathan [A2] for demanding illegal gratification.

5. The said complaint was registered and taken up for investigation. The Trap was laid and two official witnesses were called to witness the trap. The tainted money of Rs.1,500/- was smeared with phenolphthalein and handed over to the defacto complainant to be given to Rajendran [A1] and Boominathan [A2], if they demand.

6. On 03.05.2005, at about 11.30 hours Ramachandran [PW.1] and Narasimanan [PW.2] went to Thirukkuvalai Taluk Office met Boominathan [A2] and informed him that he has brought the money which Rajendran [A1] and Boominathan[A2] demanded. Boominathan [A2] has directed Ramachandran [PW.1] to give the money to Vinayagaswaminathan [A3], since Rajendran [A1] had gone out of the office after giving due instruction to Vinayagaswaminathan [A3]. Accordingly, Ramachandran [PW.1] gave the tainted money of Rs.1,500/- to Vinayagaswaminathan [A3] which was later recovered by the Trap team, after receiving the prearrange signal given by Ramachandran [PW.1].

7. The Hand wash of Vinayagaswaminathan [A3] was collected and send it to laboratory along with the pant pocket wash. The Chemical analysis report indicates the presence of phenolphthalein and sodium carbonate in all the samples.

8. After completion of investigation, final report has been laid against the accused [A1] Rajendran, [A2] Boominathan and [A3] Vinayagaswaminathan for the alleged offence under Section 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act.

9. To prove the case, the prosecution has examined 13 witnesses, marked 13 Exhibits and 6 material objects. In defence 3 witnesses and 4 Exhibits were marked.

10. The Trial Court, after assessing the evidence, found there is no evidence against the accused A1 [Rajendran] and A2 [Boominathan] to prove demand of illegal gratification, except the ocular evidence of PW.1 [Ramachandran] which carry bundle of contradictions.

11. As far as A3 [Vinayagaswaminathan] is concerned, the Trial Court has held him guilty since the tainted money was recovered from his possession and PW.2 had corroborated the evidence of PW.1. The accused has not given any explanation for the money in his possession, hence the presumption under section 20 of the Act

12. Relying upon the judgment of Hon'ble Supreme Court in B.Noha vs State of Kerala reported in [2007] 1 MLJ. [Cr1] 1110 (SC). the Trial Court has concluded that the money recovered from A3 [Vinayagaswaminathan] is not remuneration but illegal gratification and having fail to discharge the burden of innocence, he is liable to be convicted.

13. Accordingly, the trial Court has imposed sentence of six months Rigorous Imprisonment and fine of Rs.500/- in default to undergo one month Rigorous Imprisonment for the offence under Section 7 of Prevention of Corruption Act and to undergo one year Rigorous Imprisonment and fine of Rs.500/- in default one month rigorous imprisonment for offences under Section 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act.

14. The learned counsel appearing for the appellant in Cr1.A.No.607 of 2008 would contended that the trial Court miserably fail in appreciating the evidence let in by the prosecution as well as defence in holistic manner. While rightly acquitting the accused A1 [Rajendran] and A2 [Boominathan] against whom the complaint for demand of illegally gratification being lodged, it has erred in convicting A3 who never demanded any illegal gratification.

15. The Trial Court had erroneously held that the A3 [Vinayagaswaminathan] was guilty merely because the tainted money was found in his possession. The Trial Court totally fail to see that manner in which the money was given to him and recovered. The genesis of the case is borne out of the illegal felling of the tree by the mother of defacto complainant, Kathaiyeemmal.

16. Based on the information received about the illegal felling of the tree, the accused persons A1 [Rajendran], A2 [Boominathan] and A3 [Vinayagaswaminathan] had conducted spot inspection and submitted their report on 28.04.2005 to Gopalachandran [PW.6] who is the P.A to Revenue Divisional Officer, Mayiladuthurai. Ex.A.6 the file regarding the inspection reveals the illegal felling of tree by mother of the defacto complainant and penalty proposed on her. PW.6

[Gopalachandran] had deposed that based on the report, from the Revenue Divisional Office they inspected the spot to assess the value of the tree on their inspection, the tree was assessed at Rs.1,500/- and penalty of Rs.1,500/- was imposed and totally Rs.3,000/- was collected from the concerned person.

17. While the accused persons had already submitted the report indicting the defacto complainant mother [Kathaiyeeammal] for the offence of felling Government Tree in Poramboku land as early as 28.04.2005, there is no reason to demand any illegal gratification from the defacto complainant to cover up the evidence. The Trap Laying Office in his anxiety to make his trap proceeding a successful, one had caught the person to whom the defacto complainant has given the tainted money under false protest. Hence, they submitted that the A3 [Vinayagaswaminathan] being an innocent victim of circumstances, he should be set at liberty by allowing this appeal.

18. The learned counsel appearing for the defacto complainant and the Revision Petition challenging the order of acquittal against the accused A1[Rajendran] and A2[Boominathan] would submit that PW.1 [Ramachandran] in his evidence had deposed about the demand of illegal gratification by the accused person A1 and A2. On 28.04.2005, the subsequent reiteration of demand is by A2 [Boominathan] on 29.04.2005 and 03.05.2005. As per the direction of A2 [Boominathan], PW.2 had given the money to A3 [Vinayagaswaminathan]. A3 received the money on behalf of the A1 [Rajendran] and A2 [Boominathan] knowing fully well it is the illegal gratification demanded by A1[Rajendran] and A2 [Boominathan]. Since the culpability had been proved against A3 [Vinayagaswaminathan], the trial Court has rightly convicted him But it also fail to appreciate the fact that A3 [Vinayagaswaminathan] had received the money on behalf of A1 [Rajendran] and A2 [Boominathan], the demand was directly made by the accused A1 [Rajendran] and A2 [Boominathan] to PW.1 [Ramachandran]. Therefore, A1 [Rajendran] and A2 [Boominathan] are the prime accused and equally liable that of A3 [Vinayagaswaminathan]. सत्यमेव जयते

19. The learned Additional Public Prosecutor contended that, exonerating A1 [Rajendran] and A2 [Boominathan] on flimsy ground he has to be reviewed and the order of acquittal has to be set aside. A1 [Rajendran] and A2 [Boominathan] should be convicted for the offence committed by them.

20. The learned Additional Public Prosecutor appearing for the respondent both in the Criminal Appeal as well as the Revision Petition would contend that the inspection of the village by the accused persons on 27.04.2005 is an admitted fact. The prosecution has proved beyond reasonable doubt that the recovery of tainted money from A3 [Vinayagaswaminathan] through Eyewitness and scientific evidence. PW.1 and PW.2 had

spoken about the meeting of accused person A2 [Boominathan] in the Veranda of Taluk Office and his direction to meet A3 [Vinayagaswaminathan] and give the bribe money. The statement of A3 [Vinayagaswaminathan] to the Trap Laying Officer immediately, after the recovery of the tainted money, admitting the receipt of bribe as instructed by A1 [Rajendran] is sufficient to prove the guilt of the accused persons. Though, the state has not filed any appeal against the A1 [Rajendran] and A2[Boominathan] and the Revision Petition filed by the defacto complainant mother Kathaiyeeammal shall be taken note and their acquittal shall be set aside. The order of acquittal against the accused persons A1 [Rajendran] and A2[Boominathan] is to be reversed. The conviction of A3 [Vinayagaswaminathan] since, he has failed to rebut the presumption cast upon by them under Section 20 of Prevention of Corruption Act.

21. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondent. Perused the oral and documentary evidence.

22. From the records, this Court finds that Kathaiyeeammal the mother of the defacto complainant had illegally fell grown up tree standing on the Government Land Poramboku land, between 23.04.2005 to 26.04.2005. Based on the information, A1 [Village Administrative Officer], A2 [Village Assistant] and A3 [Revenue Inspector] had gone to the spot for inspection on 27.04.2005. PW.1 alleges that A1 [Rajendran] and A2 [Boominathan] on 28.04.2005 demanded bribe. However, he has given the complaint to the Vigilance and Anti Corruption only on 02.05.2005. On 28.04.2005, admittedly the defacto complainant had filed the statement of his mother to the Revenue Authorities, accepting the guilt of felling tree. On the same day A1[Rajendran] has forwarded the report to Regional Divisional Office which is spoken by PW.6. Once report filed, it is for the RDO to act upon the report. Therefore the allegation made in the complainant of PW.1 [Ramachandran] that A1[Rajendran] and A2[Boominathan] demanded Rs.3,000/- on 28.04.2005 later reduced Rs.1,500/- is wholly unbelievable. If it is true, the defacto complainant who is the person employed in the District Extension Office at Collectorate could have given the complaint on the same day and not waited for four day. It appears that his attempt to hush up the misdeed of his mother failed to fructify, so he had invented the theory for demand of illegal gratification. Since, the trap laying team has believed his story, they had gone all along to Taluk Office on 03.05.2005. A1[Rajendran] and A2[Boominathan] were not there. To make their attempt a success, the tainted money has been given to A3 [Vinayagaswaminathan] without informing about anything who innocently accepted it. Unless the demand of illegal gratification and acceptance of the same is proved. The presumption under Section 20 cannot be invoked.

23. Admittedly, in this case, A3 [Vinayagaswaminathan] had never demanded bribe or any illegal gratification from PW.1 [Ramachandran] even on 03.05.2005 it was PW.1 who has gone to A3 [Vinayagaswaminathan] and given the tainted money as if A1 [Rajendran] had told him to given the money. Without knowing for the purpose for which the money was given to him, A3 [Vinayagaswaminathan] had accepted it. Soon there after, the trap team has caught A3 [Vinayagaswaminathan]. This court, hold so because A1 [Rajendran] had mounted the witness box as DW.3 and had deposed about the animosity between him and PW.1 [Ramachandran]. Further, PW.6 evidence goes to show that A1 to A3 as early as 28.04.2005, had submitted their report to the higher official indicting that the PW.1[Ramachandran] mother has illegally fell the tree. This has infuriated PW.1[Ramachandran] to lodge a false complaint. The trial Court has rightly acquitted the accused persons A1 and A2. There is no perversity in the judgment as far as the order of acquitting the accused persons A1 and A2. Therefore, the Revision Petition is liable to be dismissed. Accordingly Crl.R.C.No.1629 of 2008 is dismissed.

24. Regarding A3 [Vinayagaswaminathan], even according to the prosecution there was no demand of bribe by him. The recovery of tainted money from A3 [Vinayagaswaminathan] perse will not hold him liable for guilty of offence under Section 7 or 13 (1)(d) of Prevention of Corruption Act. The acceptance of money must be towards illegal gratification received in the course of abusing his official position. There is no evidence to infer that the money recovered from A3 [Vinayagaswaminathan] appellant in Crl.A.No. 607 of 2008 was obtained by him as pecuniary advantage, abusing his official position. It could be seen that the money has been voluntarily given to him by PW.1 under false protest. Therefore, the Criminal Appeal preferred by A3 [Vinayagaswaminathan] is to be allowed.

25. Accordingly, the Criminal Appeal No.607 of 2008 is allowed. The judgment of conviction and sentence imposed on A3 by Special Court for Prevention of Corruption cases [Chief Judicial Magistrate], Nagapattinam in Special C.C.No.16 of 2006 is hereby set aside. The bail bond executed, if any, by the appellant shall stand cancelled. Fine amount paid, if any, shall be refunded to the appellant.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

bsm

To

- 1.The Chief Judicial Magistrate,
The Special Court (Prevention of Corruption cases)
Nagapattinam.
2. The Inspector of Police, Anti-Corruption & Vigilance
Department,
Nagapattinam District.
3. The Additional Public Prosecutor, (Criminal Side)
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court,
Madras.

+lcc to Mr.S.Sounthar , Advocate SR.No.7364
+lcc to Mr.B.Mahendranaidu, Advocate SR.No.7877
+lcc to Mr.D.Veerasekaran, Advocate SR.No.7280

Crl.R.C.No.1629 of 2008 &
Crl.A.No.607 of 2008

KJI (CO)
GN(14/02/2018)



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