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BAIL SLIP

The Appellant/Accused Viz., P.K.Chandrasekaran, S/O. Late Krishnamorthy, was directed to be released on bail as per the order of the court dated 15.02.2012 in MP No.1/2012 CrI A.83 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.83 of 2012

P.K.Chandrasekaran

.. Appellant/Accused

/versus/

State rep.by:

The Inspector of Police,
SPE/CBI/ACB, Chennai.

.. Respondent/Complainant

Criminal Appeal filed under section 374(2) of the Criminal Procedure Code against the judgment dated 25.01.2012 passed by the XIV Additional Special Judge for CBI Cases, Chennai in C.C.No.13 of 2009.

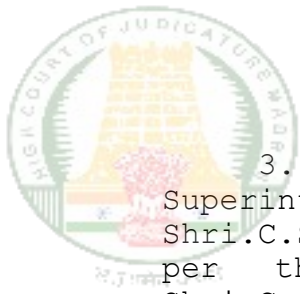
For Appellant : Mr.M.K.Kabir, Senior Counsel for
Mr.R.Sankarappan

For Respondent : Mr.K.Srinivasan, Spl.PP(CBI)

J U D G M E N T

This appeal is against the judgment of conviction passed by the XIV Additional Special Judge for CBI Cases, Chennai made in C.C.No.13 of 2009, dated 25.01.2012.

2. Brief facts of this case is that on 17.10.2008, Thiru.V.Manikandan, resident of Senneerkuppam, Chennai met P.K.Chandrasekaran the appellant herein, who was the then Income Tax Officer, Ward I(3) Tambaram, at the office of Joint Commissioner of Tambaram for refund of his tax, which he has paid in excess for the assessment year 2007-2008. Since the appellant demanded illegal gratification of Rs.1,500/- to release the refund order, Thiru.Manikandan has gone to the office of CBI and lodged a complaint about the demand of illegal gratification by the appellant.



3. Based on his complaint dated 20.10.2008, the Superintendent of Police, CBI, ACB, Chennai has instructed Shri.C.S.Moni, Inspector of Police to investigate the matter. As per the instruction of the Superintendent of Police, Shri.C.S.Moni has arranged two shadow witnesses viz., 1.Mr.Ramesh, Inspector, Southern Railway and 2.Mr.K.Kumar, Manager of Canara Bank, Teynampet. In the presence of the shadow witnesses and the defacto complainant, he has demonstrated the significance of phenolphthalein-sodium carbonate test. Thereafter, bribe money of Rs.1,500/- has been smeared with phenolphthalein powder and entrusted to the defacto complainant. A micro tape recorder was also given to the defacto complainant to record the conversation during the trap. The defacto complainant Thiru.Manikandan accompanied by Mr.Kumar, the shadow witness, had gone to the office of Income Tax at Tambaram. The appellant was not found in his chamber. They enquired one Sivagama Sundari, who was present in the appellant's chamber. She informed the appellant is in the chamber of Ettiappan, ITO. On seeing the complainant, the appellant has asked him to wait. After some time, he called Manikandan and demanded the bribe money. The defacto complainant has given the tainted money, which was received by the appellant and kept in his table drawer. On receipt of the pre-arranged signal, the trap team entered into the cabin of the appellant. After conducting phenolphthalein test in the hands of the appellant, the trap laying officer enquired the appellant about the money received from the defacto complainant. On his information, recovered it from his table drawer. The trap laying officer has prepared recovery mahazar, sketch and after collecting sample solutions of the phenolphthalein test had arrested the appellant.

4. Mr.G.Palaniappan[PW-11], Investigating Officer had taken up the investigation. After obtaining the reports from the scientific experts regarding phenolphthalein solution and the voice sample, he placed the records collected during investigation to Mr.M.K.Choudhary, the Commissioner of Income Tax, the authority competent to grant sanction for prosecuting the appellant. After obtaining the sanction, final report has been filed before the trial Court on 20.03.2009.

5. The trial Court, on perusing the records accompanying the final report, had framed charges under Section 7 of the Prevention of Corruption Act, 1988 and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 11 witnesses. 19 exhibits and 6 material objects were marked through the witnesses. In defence, one witness and 4 exhibits were marked. The trial Court has held the accused guilty of offence under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and convicted him to undergo one year Rigorous Imprisonment and



to pay a fine of Rs.500/- in default to undergo three months Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo two years Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo three months Simple Imprisonment, for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The above sentences were ordered to run concurrently.

6. Aggrieved by the said judgment and conviction, the present appeal is preferred on the following grounds:

The defacto complainant being the sole witness for the demand and acceptance had contradicted his own version in the chief and cross examination. Whereas the trial Court has failed to consider the self-contradiction of the defacto complainant (PW-2), but relying upon the uncorroborated version of shadow witness PW-3 and the trap laying officer PW-4, has found the appellant guilty.

7. The learned Senior Counsel appearing for the appellant pointed out that admittedly, the appellant is not the person competent neither to process nor issue the refund order. Through the defence it has been established that any request for refund of Income Tax has to be processed at the office of Mumbai and the assessee will be intimated about the refund directly. In the absence of any record to show that the defacto complainant is entitled for refund, the allegation of demand of illegal gratification to release the refund order and acceptance of illegal gratification is baseless. The prosecution has failed to prove the charges, but the trial Court has over looked the lacuna in the prosecution case.

8. It is contended by the learned Senior Counsel appearing for the appellant that timing of the complaint, registration of the First Information Report, pre-trap proceedings and the trap events do not probablise the case of the prosecution. However, the trial Court has not addressed this infirmity in the case of the prosecution.

9. Per contra, the learned Special Public Prosecutor for CBI appearing for the respondent would submit that Ex.P3-complaint and Ex.P5-copy of the SARAL Form speaks for itself. The defacto complainant Manikandan [PW-2], who had paid advance tax of Rs.20,346/- on 16.05.2007, was entitled for refund of the said money and when he approached the appellant, who was in-charge of refund had demanded Rs.1,500/- on 17.10.2008. The written complaint of PW-3 narrating the illegal demand was received by Superintendent of Police, CBI at Nungambakkam, who in turn has entrusted the matter to PW-4 Shri.C.S.Mony for follow up action. The entrustment mahazar [Ex.P4] and the recovery mahazar [Ex.P9] go to show that the bribe money smeared



with phenolphthalein at CBI, Tambaram had found in the drawer of the appellant during the trap proceedings. While the demand of illegal gratification is spoken by PW-3 through the complaint as well as testimony before the Court, the recovery is spoken by PW-3-shadow witness and PW-4-trap laying officer. The contemporaneous documents namely, recovery mahazar[Ex.P9], phenolphthalein test conducted in the hands of the appellant immediately after trap, which has been proved positive and the chemical analysis report [Ex.P15] are suffice to show that there was demand and acceptance of M.O.1 [Rs.1500/-] by the appellant and the same had been recovered in the presence of the witnesses. When the appellant has failed to give any plausible explanation for the receipt of the money from the defacto complainant [PW-2], the presumption under Section 20 of the Prevention of Corruption Act, 1988 is necessarily to be drawn against the appellant. Having failed to rebut the presumption, the judgment of the trial Court is perfectly correct and need not be interfered regarding discrepancies and contradictions in the evidence.

10. The learned Special Public Prosecutor would also submit that the contradiction pointed out by the defence in chief examination of PW-2 that the accused received the money and kept in the left side shirt pocket is insignificant. Since during the cross examination, he had supported the case of the prosecution that the money was recovered from the table drawer, which corroborated by the evidence of PW-3 and PW-4. The presence of phenolphthalein in the hands of the appellant had been proved beyond doubt through phenolphthalein-sodium carbonate test conducted on the spot. The conversation between the appellant and the defacto complainant was recorded in a mini tape-recorder and the same has been copied in a CD marked as M.O.3. The conversation was compared with specimen voice of the defacto complainant and the appellant. The Expert [PW-6] had given his report in support of the prosecution. Therefore, having proved the demand and acceptance of illegal gratification by the appellant and the appellant having failed to rebut the presumption, this appeal has to be dismissed.

11. Point for consideration:

Whether the demand and acceptance of illegal gratification as spoken by PW-2 is adequately corroborated and proved by the prosecution beyond doubt?

12. The short point involved in this case is that PW-2, who had paid income tax in advance for the financial year 2007-2008 during the month of April 2007 had sought for refund of Rs.20,346/-. It is the case of the prosecution that to process the refund order the appellant has demanded Rs.1,500/- on



17.10.2008. The sole witness to say about the alleged demand is PW-2. While deposing before this Court, this witness in his chief examination has said that the appellant said without payment of atleast Rs.1,500/- for the Government, he cannot seek refund of entire tax paid by him. It is also pertinent to point out that PW-2 has said that the tainted money was received by the appellant and kept in his shirt pocket. Whereas, when he was cross examined after one year and 2 months, he has deposed that the money was recovered from the table drawer of the appellant. The specific case of the prosecution is that the tape recorder was given to this witness to record the conversation between him and the appellant. Though CD had been filed as material object, the content of the CD is not before this Court. Therefore, what really transpired between them is also not available and the trial Court has not taken any measures to run the CD and find out the content of the CD. However, the very CD was sufficient for the trial Court to hold that there was demand and acceptance of illegal gratification. The CD and the specimen sample drawn from the appellant and the defacto complainant at the most can give inference that both had some conversation at some point of time. It is not a conclusive prove for demand and acceptance unless the content of the CD is extracted and placed before the Court to satisfy that there was demand and also no tempering in the process of recording and copying it in the CD.

13. It is pertinent to point out at this juncture that the case of the prosecution is that the money was recovered from the cabin of the accused. It is seen from the witnesses for prosecution, PW-10 [Sivagamasundari] was present, when the trap team entered into the cabin of the appellant and also during the recovery of the tainted money from the table of the appellant. Whereas PW-10 does not whisper anything about the recovery of tainted money. She has said only about handing over the file related to refund. Apart from PW-3 the shadow witness and PW-4 trap laying officer, there is no other evidence to corroborate the evidence of these two witnesses. When the person who has given the alleged money had not supported the case of the prosecution and coupled with contradiction about the place of recovery of money, presence of the phenolphthalein in the hands of the accused/appellant is the only incriminating material against him.

14. In this regard, the learned Senior Counsel appearing for the appellant would submit that whether phenolphthalein test was conducted in the manner spoken by the prosecution witness itself is doubtful, since neither the sketch accompanying the observation mahazar nor the witnesses have spoken about the place at which the phenolphthalein test was conducted. Whether test was in the cabin of Ettiappan or in the cabin of the appellant is not spoken by the prosecution witnesses.



Furthermore, the container in which the sodium carbonate solution was mixed for the phenolphthalein test is also doubtful. The contradiction between the witnesses regarding the container whether it was a glass tumbler or bottle creates suspicion about the case of the prosecution. To add, PW-2 had deposed that immediately after seeing the appellant, the trap laying officer had held his hands and thereafter he subjected the hands of the appellant for the phenolphthalein test. Put together, when the manner in which phenolphthalein test was conducted and the samples collected itself causes suspicion, based on the phenolphthalein test result the appellant cannot be held guilty. This Court is in agreement with the submissions made by the learned Senior Counsel appearing for the appellant in this regard. Since the prosecution has not proved the demand and acceptance of illegal gratification beyond reasonable doubt and the manner in which the tainted money recovered also create suspicion due to contradictions between the evidence of PW-2 and PW-4, besides failure of the prosecution to place the transcript of the alleged version between the appellant and the defacto complainant inures the benefit of doubt in favour of the appellant.

15. In the result, the Criminal Appeal is allowed. The judgment of conviction dated 25.01.2012 passed by the XIV Additional Special Judge for CBI Cases made in C.C.No.13 of 2009 is hereby set aside. Fine amount if any paid by the appellant shall be refunded to him. The bail bond if any executed by the appellant shall be cancelled.

Sd/-

Assistant Registrar (CS-iv)

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Sub Assistant Registrar

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To:

- 1.The XIV Additional Special Judge for CBI Cases, Chennai.
- 2.The Inspector of Police, SPE/CBI/ACB, Chennai.
- 3.The Special Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

+2cc to Mr.R.SANKARAPPAN, Advocate, S.R.No.42451

+1cc to Mr.K.SRINIVASAN, Advocate, S.R.No.42491

CrI.A.No.83 of 2012

TR(11/07/2018)