BAIL SLIP

CRL.A.511 OF 2004

The Appellant herein/Accused namely P.Achutha Menon, S/o.Narayanan Nair (in C.C.No. 5/2000 on the file of the IV Additional Sessions Court, Chennai) was released on bail as per order of this court, dated 06/04/2004 made in Crl.MP.No. 3988/2004 in Crl.A.No. 511/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2017

Pronounced on : 03.09.2018

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.511 of 2004

P.Achutha Menon ... Appellant/Accused

Vs.

State Rep. by
Inspector of Police,
Anti Corruption and Vigilance,
Adyar, Chennai - 600 020. ... Respondent

PRAYER:- Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the order of Conviction dated 15.03.2004 made in C.C.No.5 of 2000 on the file of the IV Additional Sessions Court, Chennai.

For Appellant : Mr.S.Y.Masood

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the order of conviction dated 15.03.2004 made in C.C.No.5 of 2000 on the file of the IV Additional Sessions Court, Chennai and acquit the accused.

2.The case of the prosecution is that PW2, defacto complainant gave a complaint before the Superintendent of Police, Vigilance and Anti-Corruption by stating that his father was running a Hotel at Villivakkam, under the name and style of Udipi Krishna Nivas and after completing his M.A. (Economics) from the Loyola College, he was assisting his father in Hotel business. The licence to run the Hotel was to be renewed and one of the condition is that No Objection Certificate from the Fire Service Department had to be obtained with regard to the Gas Lines in the Hotel.

3.The defacto complainant (PW2) on 28.04.1999, went to the Fire service station at Villivakkam and obtained a form for issuing Fire Licence from the appellant/accused herein. On the same day at 2.30 p.m. the defacto complainant had filled up the form and sought for issuance of No Objection Certificate. On 02.05.1999, one person from Vilivakkam Fire service station, came to the Hotel and directed the defacto complainant (PW2) to meet the appellant/accused. As he had other works he did not go to the office of the appellant/accused.

4.On 03.05.1999, at about 11.00 a.m. the appellant/accused went to the Hotel and instructed the defacto complainant (PW2) to come and meet him in the Fire service station with regard to issuance of No Objection Certificate and there he informed the defacto complainant (PW2) that recommending for the issuance of No Objection Certificate to the Hotel, he has to pay a sum of Rs.1,000/- (Rupees one thousand only) to the appellant/accused and his superior officers. The defacto complainant after consulting his father and one Jayaraman, decided not to give the amount and he went to the office of the Superintendent of Police, Vigilance and Anti-Corruption and lodged a complaint against the appellant/accused alleging that unless the amount of Rs.1,000/- (Rupees one thousand only) is paid, the appellant/accused would not recommend for issuance of No Objection Certificate and therefore, requested the respondent to take action against the appellant/accused.

5.The respondent on receipt of the complaint registered a case in Cr.No.2/AC/99/CC-I, against the appellant/accused on 05.05.1999 under Section 7 of the Prevention of Corruption Act, 1988. On receipt of the complaint, a trap was organized. The respondent preferred a Mahazar at 12.30 a.m., in the presence of two independent witnesses, namely, R.Srinivasan and V.Jagadeesan of Hindu Religious and Charitable Endowment Department, Chennai - 600 034. The defacto complainant (PW2) brought ten hundred rupee notes of various serial numbers, meant to be given to the appellant/accused. The witnesses were explained about the pre-trap laying proceedings and also demonstrated the same in the presence of the witnesses to the defacto complainant (PW2). Thereafter, gave instruction to the defacto complainant (PW2) and the independent witness viz. V.Jagadeesan, PW3 to go to the office of the appellant/accused and if the appellant/accused once again demanded the bribe money then, the defacto complainant (PW2) has to handover the money to the appellant/accused and come out of the office and show the pre-arranged signals as per the strict instructions given by the trap laying officers.

6.The defacto complainant (PW2) was instructed that if the appellant/accused demanded the bribe money then only he has to handover the money, unless he demand the bribe money, the defacto complainant should not handover the money so. As per the instruction PW2 and PW3 went to the office of the appellant/accused with the money of Rs.1,000/- (Rupees one thousand only) to be given to the appellant, at that time PW3 was also present. Appellant/accused also demanded and accepted the bribe money and kept in the right side drawer of his table. Then, the appellant/accused asked about PW3, for that PW3 informed to him that he is friend of PW2 and after that they came out of the office and showed the pre-arranged signal to the trap laying team as instructed earlier.

7.After seeing the pre-arranged signal, the trap laying officers rushed near PW2. After making enquiry about the incident the trap laying team immediately rushed to the seat of the appellant/accused. PW2 identified the appellant/accused to the trap laying officer i.e., the Inspector of Police and the Inspector of Police identified himself and then he asked the defacto complainant (PW2) to come out of the place, then immediately asked about the money i.e. the tainted money from the appellant/accused and the appellant/accused took the money from the right side of the table drawer and handed over to the Inspector of Police in the presence of PW3.

8.The Inspector of Police recovered the above said tainted money vide Mahazar and conducted Phenolphthalein test and dipped the right hand and left hand fingers of the appellant/accused separately into the solution of sodium carbonate when he did so, the colour of the two solutions turned into pink. The trap laying officer transferred the pink coloured solution in which the appellant/accused had dipped his right hand and left hand fingers into a clean bottles corked and sealed it and labelled the same and got the signatures of the witnesses and prepared the Mahazar and sent to the Court vide Form-95 with the appellant and subsequently handed over the case to the Inspector of Police/PW14. PW14 after completing the further investigation laid the charge sheet before the Special Court i.e., the IV Additional Judge, City Civil Court, Chennai.

9.The IV Additional Judge, City Civil Court, Chennai had taken the case on file in C.C.No.5 of 2000 and furnish the copy to the appellant/accused. After receiving the copy, the appellant/accused denied the allegations. The Special Judge after framing charges against the appellant/accused and explained the charges, since the appellant/accused denied the charges framed. The learned Special Judge issued summons to the prosecution witnesses for trial.

10.In order to prove the case of the prosecution, on the side of the prosecution as many as fourteen witnesses were examined and nine documents were marked and three exhibits were exhibited. When the incriminating materials, were put to the appellant/accused under section 313 Cr.P.C, he denied the evidence as false. The appellant/accused filed the written statement denying the allegations and also denying the charges and also the evidence of the witnesses. On the side of the defence as many as four witnesses were examined and five documents were marked and no exhibits were exhibited and one Court witness was examined.

11.After completion of trial, the trial Court heard the rival submission made on either side.

12.The trial Court i.e. the Special Court convicted the appellant/accused for the offences punishable under Section 7 and 13 (i) (b) r/w 12 (2) of the Prevention of Corruption Act, 1988 and sentence to undergo one year Rigorous Imprisonment and also to pay a fine of Rs.500/- in default to undergo three months Simple Imprisonment.

13.Feeling aggrieved with the judgment of conviction and the sentence passed by the Special Judge, the appellant/accused has preferred the present appeal mainly on the ground that the appellant/accused has proved his defence through the oral and the documentary evidence that on 05.05.1999, there was an inspection in his office and no public was allowed inside between 9.00 a.m. to 2.30 p.m. defacto complainant (PW2) out of frustration imagined that it is only the appellant/accused who is delaying the No Objection Certificate. In order to wreck vengeance against the appellant/accused, the defacto complainant (PW2) has made a false complaint to the respondent Police. The respondent Police also without ascertaining the veracity of the complaint has mechanically registered the case.

14.The sanction accorded by PW1 is not legally sustainable and valid. PW1 without application of mind has mechanically accorded sanction. The Special Court mainly relied on the recovery of the tainted money from the table drawer of the appellant/accused for conviction. It is a well settled law that the cases like this mere recovery of the bribe amount will not sufficient to punish a person under the prohibition of Corruption Act and that the demand, acceptance and recovery have all together be proved by the prosecution beyond all reasonable doubts. Any doubt arises and if two views are possible and the benefit of doubt always goes in favour of the appellant/accused. Therefore, in this case there is a material contradiction between the prosecution evidence and further the appellant/accused has disproved the case of the prosecution by examining himself as DW4 and also the superior officer as DW1. He has clearly spoken that on 05.05.1999, alleged date of occurrence from 09.00 a.m. to 2.30 p.m. there was an inspection at the Fire Service Office and none was permitted to enter into the office. The said facts were established through the defence witnesses and the Special Judge failed to consider this aspect and simply relied on the prosecution evidence and without considering the defence witnesses. Therefore, the conviction and sentence passed by the Special Judge is illegal and the same is liable to be set aside and prayed for allowing the appeal.

15.Heard the rival submission made by the learned counsel on either side and perused the materials placed on record.

16.The First Appellate Court is a fact finding Court, the evidence has to be re-appreciated independently and have to come to a conclusion independently.

17.It is the main case of the prosecution is that on 05.05.1999 at about 10 'O' Clock, PW2 went to the office of the appellant/accused where he demanded Rs.1,000/- and PW2 left from the office by telling him that he would come in the afternoon and after that he approached the Superintendent of Police, Vigilance and Anti-corruption Department by giving complaint against the appellant/accused. The Superintendent of Police, Vigilance and Anti-corruption Department after receipt of the complaint introduced the defacto-complainant to the trap laying officer i.e. the Inspector of Police, PW13 for taking further action.

18.In fact PW13 summoned two independent witnesses and demonstrated the pre-trap laying proceedings and thereafter, they came to the office at 3.30 p.m. where the trap ended successfully and they arrested and remanded the appellant/accused. Subsequently, after completing investigation, the Inspector of Police laid the charge sheet. But whereas the case of the defence is that on the alleged date of occurrence on 05.05.1999 from 9.00 a.m. to 2.30 p.m. there was an inspection in the office and no public was allowed to enter into the office. Therefore, the complaint putforth by the defacto complainant (PW2) that on alleged date of occurrence on 05.05.1999 at 10.00 a.m. he went to the office of the appellant/accused where the appellant/accused demanded bribe of Rs.1,000/- from the defacto complainant (PW2) is not at all possible. The sanctioning authority PW1 has failed to look into these aspects, mechanically accorded the sanction.

19.The learned counsel for the appellant would submit that , in this case, the appellant/accused examined four witnesses and he was also examined as DW4. It is specifically proved from the evidence of DW1 to DW4 that on the date of the alleged occurrence on 05.05.1999 there was an inspection in the office of the appellant/accused and further, the appellant/accused never met anybody in the office during that time including the PW2. There is no evidence to prove that PW2 visited the office of the appellant/accused and met him in his office where he demanded the bribe money from the defacto complainant (PW2). Further the settled proposition of law, the case like this mere recovery is not sufficient to prove the case. Demand, acceptance and recovery all together have to be proved.

20.The evidence of DW4 also clearly says that the recovery had not been effected in accordance with the prevailing rules. DW4 in his evidence demonstrated how the recovery was made from the appellant/accused and also how they collected the Phenolphthalein test sample and therefore they have not proved the recovery in the manner known to law even assuming that recovery was proved. But the prosecution has not proved the demand. Therefore, in the absence of any demand, acceptance and recovery, no one can be convicted so.

21.The respondent failed to prove that the appellant/accused demanded bribe from the defacto complainant (PW2) and accepted the same and recovery was effected in the manner known to law. Therefore, under such circumstances the prosecution failed to establish its case beyond the reasonable doubt.

22.The Special Judge failed to consider the legal propositions and lack of material evidence mechanically convicted the appellant/accused and passed a sentence. The conviction and sentence passed by the learned Special Judge is illegal and not in accordance with law and therefore, it is liable to be set aside.

23.The learned counsel appearing for the respondent would submit that the prosecution has established its case beyond the reasonable doubt. The defence taken by the appellant/accused is only an after thought. After the completion of the recovery where the witnesses and the appellant/accused have signed in the sample bottles labelled which contained the solution of Sodium Carbonate. At that time, he never raised any objections. He co-operated for the trap laying procedures and recovery of the tainted money from the appellant/accused and further even DW1 has also not made any complaint either before the Superior of the appellant/accused or the superior of the trap laying officer. Even he had not reported any complaint before the Magistrate at the first instance when he was produced for remand. Only at the time of section 313 proceedings he made such a statement. The same is an after thought and the defence taken by the appellant during section 313 Cr.PC is nothing but a brain child of the defence counsel and not actual defence of the appellant/accused and it will not be helpful to the case of the defence.

24.The learned Special Judge has considered all the oral and documentary evidence and an attempt made by the appellant/accused by way of defence and the learned Special Judge rightly rejected the contention raised by the appellant/accused and came to the conclusion that the prosecution proved the case beyond all reasonable doubts and convicted the appellant/accused and passed a sentence and there is no illegality and perversity in the order passed by the learned Special Judge. The learned Special Judge has appreciated the oral and documentary evidence produced by the prosecution and also well considered the defence taken by the appellant/accused and since, the defence is an after thought one and rightly rejected the same. There is no merit in the appeal and the appeal is liable to be dismissed.

25.As already stated, since the First Appellate Court is a fact finding Court in order to come to an independent conclusion. It has to re-appreciate the entire oral and documentary evidence as independently to arrive at a conclusion.

26. According to the respondent, prosecution allegations against the appellant/accused is that the appellant/accused worked as Station Fire Officer, Villivakkam Fire Station, Chennai - 600 049 from 01.06.1998 to 1999 he was a public servant as defined under Section 2 (1) of the Prevention of Anti-Corruption Act, 1988. On 03.05.1999 at about 11.00 Hrs. at the hotel Udipi Krishna Nivas, No.22, M.T.H. Road, Villivakkam, Chennai - 600 049, when the appellant/accused met PW2 for recommending No Objection Certificate for obtaining Fire licence to his hotel from the District Fire Officer, Thiruvallur, the appellant demanded bribe of Rs.1,000/-

27.The appellant/accused reiterated the said demand on 05.05.1999 at about 10.00 a.m. when PW2 met him in his office. Further, at about 15.30 Hrs, on the same day in the office of the appellant/accused at Villivakkam, Chennai - 600 049, the appellant made a demand and accepted a sum of Rs.1,000/- as gratification other than legal remuneration as a motive or reward for recommending No Objection Certificate for obtaining Fire Licence to the Hotel of the defacto complainant (PW2) from the District Fire Officer, Thiruvallur and thereby the appellant/accused committed the offence under Section 7 of the Prevention of Corruption Act, 1988.

28.In the course of the same transaction, time and place the appellant/accused being the public servant by corrupt or illegal means by abusing his official position obtained for himself the said sum of Rs.1,000/- from PW2. In the circumstances stated above, thereby the appellant committed the offence punishable under Section 13 (i) (b), 13 (2) of the Prevention of Corruption Act, 1988.

29.According to the prosecution, in order to prove the case of the prosecution before the Special Court during the trial as many as fourteen witnesses were examined 19 documents were marked and three exhibits were exhibited. From the above oral and documentary evidence, the prosecution has proved its case beyond all reasonable doubts. The Special Court also accepted the version of the prosecution, the oral evidence let in and the documentary evidence produced by the prosecution and convicted the appellant/accused and passed a sentence.

30.On a perusal of the entire records the evidence of the prosecution, mainly the evidence of PW1 shows that he is the competent person to accord the sanction for prosecution against the appellant/accused to prosecute under Section 7 and 13 (i) (b) r/w 12 (2) of the Prevention of Corruption Act, 1988. He has deposed that he has meticulously gone through the materials placed before him. After going through the materials he has accorded the sanction. Since he is a Superior Officer in the Department and also the Competent person to accord the sanction. Till granting the sanction the material evidence shows that neither from the appellant/accused nor from any of the persons who worked in the appellant/accused's office informed that the trap laying team tress-pass into the office and forcefully made a trap laying proceedings. Therefore, PW1 was very conscious from the materials placed before him with the application of mind he accorded the sanction.

31.Further the evidence of PW2 who is said to be the defacto complainant in this case. The evidence of PW2 shows that his father running a hotel in the name of Udipi Krishna Nivas, No.22, M.T.H. Road, Villivakkam, Chennai - 600 049. After completing his graduation he was also helping his father in the hotel business. On 03.05.1999 and 05.05.1999 the appellant/accused demanded a bribe from the defacto complainant (PW2) since, the defacto complainant (PW2) was not willing to give bribe, therefore, he approached the Superintendent of Police, Vigilance and Anti-corruption Department and made a complaint, he in-turn called PW13 and gave an instruction and take an action.

32.PW13 registered an FIR against the appellant/accused and arranged the pre-trap demonstration proceedings. Subsequently, he was leading for trap laying team and subsequently, the trap laying proceeding was ended successfully. Thereafter, completion of the trap laying proceedings he handed over the file for further investigation to PW14 and after completing the investigation he laid the charge sheet before the Special Court.

33.The evidence of PW3 shows that he was working as an Assistant in the office of the Commissioner of Hindu Religious and Charitable Endowment, Chennai - 600 034, on the instruction of the Superior he went to the office of the Vigilance and Anti-corruption Department on 05.05.1999, where the Inspector of Police, Vigilance and Anti-Corruption introduced PW2 and also they showed the complaint given by PW2 and also make them to understand about the pre-trap laying proceedings and also what has to be done subsequently, when they gone to appellant/accused's office.

34.Further he would state that after completion of pre-trap laying demonstration proceedings, he accompanied with PW2 to the office of the appellant/accused and they reached the office of the appellant/accused on 05.05.1999 about 15.30 Hrs. after seeing PW2 and PW3 the appellant/accused asked about the money which was demanded earlier. As per instruction given by the trap laying officer after demanding only PW2 handed over the 100 ten rupee notes totally Rs.1,000/- to the appellant/accused. The appellant/accused after accepting the demanded money kept in the table drawer of the appellant/accused and later PW2 and PW3 came out of the office of the appellant/accused where PW2 showed the pre-arranged signals towards the trap laying team. Immediately, the trap laying team approached PW2 and where the PW2 narrated the same immediately they proceeded to the appellant/accused seat where PW2 identified the appellant/accused to the trap laying officer.

35.Thereafter, the trap laying officer identified himself before the appellant/accused and also had a Carbon Phenolphthalein Test and as per the direction the appellant/accused had dipped his right hand finger into the solution of Sodium Carbonate when he did so, the solution turned into pink. Like that the left hand finger dipped in the solution and they put the both hands test solution into two glass bottles and labelled the same and prepared the Mahazar and obtained the signatures which clearly shows that the evidence of PW3 corroborated the evidence of PW2.

36.From the reading of evidence of PW1, PW2, PW3 and PW13 the appellant/accused has demanded money from PW2. From the clear evidence of PW1 it is proved that the appellant/accused demanded money from PW2 and PW2 proved that the appellant/accused demanded money on 03.05.1999. On 05.05.1999 at 10.00 a.m. on the same day at 15.30 Hrs. The evidence of PW3 corroborated the demand of the appellant/accused at about 15.30 Hrs. Therefore, from the evidence of PW2 and PW3 it is clearly proved that the appellant/accused has demanded the bribe from the defacto complainant i.e. PW2 for issuing No Objection Certificate.

37.For acceptance and recovery from the evidence of PW2, PW3 and PW13, the trap laying officer has clearly shows that the appellant/accused accepted the bribe and also made recovery from the appellant/accused. Therefore, the main ingredients of demand, acceptance and recovery have been proved through the prosecution witnesses especially PW2, PW3, and PW13. Even the phenolphthalein test, the evidence of PW12 the chemical analysis report shows that the sample received from the Special Court and the test report shows that the samples contained the phenolphthalein test bottles strengthened the case of the prosecution. Though the appellant/accused has made an attempt to show that there was an inspection on 05.05.1999 from 9.00 a.m. to 2.30 p.m. and examined DW1 who has spoken about the inspection.

38.During the inspection no one would be allowed to enter into the office. Further, he had made an attempt to establish for disproving the case of the prosecution regarding the demand on 05.05.1999 at 10 'O' Clock he examined himself as DW1 and he stated that from 09.00 a.m. to 2.30 p.m., during the inspection no one was allowed into the office. Further, he denied the demand, acceptance and recovery at about 15.30 Hrs. on 05.05.1999.

39.The appellant/accused examined himself as DW4 would deny the acceptance of bribe money and he would stated that in his absence somebody put the tainted money in his table drawer and so far as recovery is concerned he would state that after trap laying officer came to his seat and kept the money on his table and forced to handle the money he refused to do so and also he denied the Phenolphthalein test mahazar and also labelled the solutions. But where as on seeing the evidence he also put the signature in the labels and he never made any complaint against the trap laying team either to his superior officer in the Head Office or to the superior officer of the trap laying officer. Even during the remand when the appellant was produced before the Magistrate he never complained anything about compulsion and coercion regarding the alleged incidents as stated by him in his evidence.

40.PW3 is the independent witness who was working as an Assistant in the office of the Commissioner of Hindu Religious and Charitable Endowment, Chennai - 600 034, who was accompanied with PW2 the defacto complainant and also narrated entire proceedings before the Special Court during the trial. There is no reason to discard or disbelieve the evidence of PW2. Even, the evidence of PW1 would show that he has gone through the entire materials placed before him and after satisfying the materials placed before him and after applying his mind PW1 accorded the sanction.

41.A perusal of the evidence of PW1 there was no material to show that in earlier occasion before receiving the file for according the sanction for prosecution against the appellant/accused neither from the appellant/accused nor any of the officials from the office received any complaint against the trap laying officers. Before questioning under Section 313 Cr.PC proceedings, the appellant/accused never made any complaint against the trap laying officer either before the superior officer of the appellant/accused or the superior officer of the trap laying officer. Therefore, his defence is after thought and also the evidence of DW2 to DW4 in order to escape from the clutches of the law.

42.The appellant/accused made an attempt before the trial Court with false defence and the same is not legally acceptable if any incident happened in his office as stated by the appellant in his evidence, the appellant/accused would have taken steps either by himself or through his co-workers. Even otherwise in public office if anything happened wrong the co-workers would have responded. It is only for the purpose of escaping from the clutches of law and not the actual defence. The defence is imaginary. There is no reason either to discard or disbelieve the evidence of PW2 and PW3 and there is no motive also against PW2 and PW3, even the trap laying officer.

43.Under these circumstances, the respondent prosecution has established its case and charges levelled against the appellant before the trial Court. Therefore, this Court has come to the conclusion that the appellant/accused found guilty for the offences punishable under Section 7 and 13 (i) (b) r/w 12 (2) of the Prevention of Corruption Act, 1988. With the above said reasons the finding of the trial Court does not warrant any interference and this Court finds there is no merit in the appeal.

44. In the result, the criminal appeal stands dismissed, the order of conviction and sentence dated 15.03.2004 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai in C.C.No.5 of 2000 is hereby confirmed and the trial Court is directed to secure the custody of the appellant to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ah/tsh

To

1.The IV Additional Sessions Judge,
City Civil Court, Chennai.

2.The Principal District Judge,
Chennai.

3.Inspector of Police,
Anti Corruption and Vigilance,
Adyar, Chennai 600 020.

4. The Additional Superintendent of Police,
Vigilance and Antir Corruption,
City Special Unit I, Chennai.

5.The Public Prosecutor,
High Court, Madras.

6. The District Collector,
Chennai.

7. The Section Officer,
Criminal Section, High Court,
Madras-600 164.

+1cc to Mr.S.Y.Masood, Advocate, S.R.No. 61143

Crl.A.No.511 of 2004

EV(CO)
GN(19/09/2018)