



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

Orders Reserved on 14.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.O.P(MD)No.17310 of 2016

in

Cr1.A(MD)Sr.No.23737 of 2016

The State Rep.by
The Public Prosecutor,
High Court,
Madras
[V&A.C., Tirunelveli
Crime No.16/2006]

: Petitioner/Appellant/Complainant

Vs.

1.R.Theertharappan
2.K.Chellathurai

: Respondents / A1 & A2

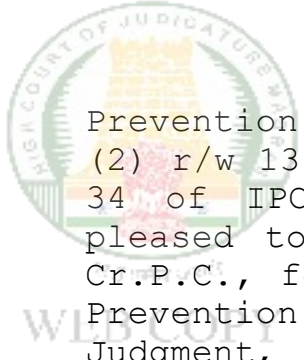
PRAYER: Petition is filed under Section 378(3) of Cr.P.C., praying to grant leave to file an appeal before this Court against the Judgment passed in Special Case No.29 of 2014, dated 24.03.2016 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli.

For Petitioner	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor
For Respondent-1	: Mr.M.Saravanan
For Respondent-2	: Mr.R.Anand

ORDER

This Criminal Original Petition has been filed praying to grant leave to file an appeal before this Court against the Judgment passed in Special Case No.29 of 2014, dated 24.03.2016, by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli.

2. The petitioner / appellant filed Special Case No.29 of 2014, against both the respondents herein, formally the Assistant Commercial Inspector, Tamil Nadu Electricity Board, Rural North, Tirunelveli, respectively before the learned Chief Judicial Magistrate / the Special Court for Trial of Cases under



Prevention of Corruption Act, Tirunelveli, under Sections 7 & 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 34 of IPC. After full-fledged trial, the Special Court was pleased to acquit the respondents / A1&A2, under Section 248(1) Cr.P.C., for the offences under Section 7 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 34 of IPC., by its Judgment, dated 24.03.2016. Against the Judgment of the acquittal, the petitioner/ State has preferred an Appeal, before this Court along with this petition seeking special leave to file the appeal.

3. On bare reading of the affidavit filed in support of the petition seeking to grant leave would show that no reason or ground is stated by the petitioner for granting leave to file an appeal before this Court. The petition to grant leave under Section 378(3) of Cr.P.C., is not an empty formality. It is only alleged that the trial Court has failed to take into consideration the evidence of prosecution witnesses. The first respondent alone has filed counter statement alleging that there is no valid ground to challenge the correctness of the findings that there is absolutely no evidence to substantiate the charges framed by the trial Court and the charge regarding the pre-trap of demand of bribe has not been proved by the prosecution thorough admissible evidence and P.W.2 / complainant did not support the case of the prosecution and he turned hostile during his examination. The official accompanying witness / P.W.3 has also not supported the case of the prosecution and hence, this petition is liable to be dismissed.

4. Perused the materials on record. Heard and considered the submissions made by either side.

5. The case of the prosecution is that the first accused worked as Assistant Engineer, TNEB Rural North, Tirunelveli, Tirunelveli District from 10.05.2002 to 26.10.2005 and the 2nd accused worked as Commercial Inspector, TNEB Rural North, Tirunelveli, Tirunelveli District from 13.09.2004 to 26.10.2005. Both are public servants, as defined under Section 2(c) of Prevention of Corruption Act 1988.

6. One Mani / Complainant approached A1 at his office at Tirunelveli before the first week of October 2005 to get three phase Electricity Service connection for his Lathe workshop at Subramaniyapuram and as per his instruction, the complainant went to the Office of the accused on 22.10.2005 at about 9.30 a.m., and A2 with common intention initially demanded a sum of Rs.6,000/- as illegal gratification other than the legal remuneration for himself and for A1, for processing the EB Service connection and to give EB Service connection to the complainant. When the complaint pleads his inability to pay the amount, A2 reduced the amount to Rs.3000/-, as bribe.



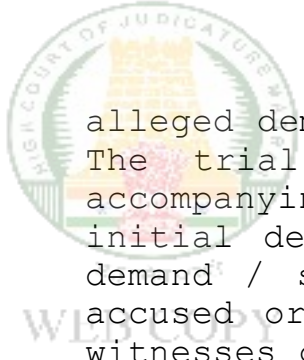
7. Latter on 26.10.2005, at about 9.15 a.m. when the complainant went to the office of the accused / A2, he demanded the amount. But the complainant pleaded about his inability to mobilize the amount. A1 came and told that action will be taken only after the payment of money either to him or to A2 on the afternoon of that date ie., on 26.10.2015.

8. In pursuance of the aforesaid demand by both the accused, the complainant along with one V.Jetsan Thangaraj, met the accused No.2 at his office at Tirunelveli at about 4.15 p.m., on 22.10.2005. A2 reiterated his earlier demand. The complainant gave Rs.3000/- to A2, who received by his right hand and counted it with both hands and placed it in his left shirt pocket and thereby, both the accused committed the offence under Section 7 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 34 of IPC. By corrupt illegal means and by abusing their official position, as public servant, obtained a sum of Rs.3000/- for himself and A1. The trial Court framed charges against both the accused for the offence under Section 7 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and also under Section 34 of IPC.,

9. Prosecution has examined P.Ws.1 to 16 and marked Exs.P1 to 26, Exs.D1 to D3 and M.Os.1 to 5 during evidence.

10. The case of the prosecution is that the 2nd accused had demanded a sum of Rs.3000/- towards bribe from the complainant for himself and on behalf of the first accused on 22.10.2010 and while the complainant met the 2nd accused at his office, the 2nd accused demanded the bribe of Rs.3000/- in the morning and while the complainant told him that he is not able to mobilize the amount and the first accused directed and demanded the complaint to bring and pay the amount in the evening on 26.10.2005 either to him or to the 2nd accused. The trial Court has found that the above fact is not corroborated by the prosecution witnesses and also the evidence of P.W.2 in particular.

11. P.W.2 has stated in his evidence that the first accused has demanded the amount of Rs.6000/- at first instance and reduced to pay Rs.3000/- on 22.10.2005 and asked him to pay the said amount on 26.10.2005. The 2nd accused has not demanded any amount as bribe from the complainant, as per the evidence of P.W.2/ complainant. P.W.2 / complainant also turned hostile and did not support the case of the prosecution. P.W.2 has further stated that he was told and directed to pay the EMD amount to the 2nd accused towards service connection. P.W.3 / accompanying witness also did not specifically depose that the 2nd accused has demanded the bribe amount only from the complainant at the time of trap proceedings held on 26.10.2005. The evidence of P.W.3 is not corroborated by any independent witness in respect of the



alleged demand at the time of trap proceedings ie., on 26.10.2005. The trial Court also came to the conclusion that P.W.3 / accompanying witness is not an dependent witness. The alleged initial demand of bribe amount on 22.10.2005 and the alleged 2nd demand / subsequent demand of bribe amount either by the first accused or the 2nd accused are not proved by P.W.2 or any other witnesses of the prosecution.

12. Prosecution has proved the fact that the currency note of Rs.3,000/- smeared with Phenolphthalein powder which were entrusted with the complainant / P.W.2 prior to laying trap proceedings were handedover by the 2nd accused on demand by the trap laying officer in the trap proceedings on 26.10.2005 and were recorded in this case. Both the hands of the 2nd accused and the shirt pocket wearing on the date of trap were subjected to Phenolphthalein test and such test had shown positive result. It is a well settled question of law that mere recovery of amount received by an accused will not constitute an offence under the Prevention of Corruption Act. Mere possession and recovery of currency notes from accused without proof of demand would not attract the offence under Section 13(1)(d) of Prevention of Corruption Act. The prosecution bound to establish that there had been a demand of bribe for discharging the duties by the public servant. The trial Court found and considered the evidence of prosecution and concluded that the charge of demand of bribe amount by the accused and also the criminal misconduct of the accused, as contended by the prosecution are not proved. Further, the learned counsel for the respondents / accused also relies the following Judgments of the Hon'ble Apex Court to support his contentions, (i) (2011 (6) SCC 450) State of Kerala and Another Vs. C.P.Rao. (ii) (2014 (13) SCC 55) B.Jayaraj Vs. State of Andhra Pradesh (iii). (AIR 2016 SC 2045) V. Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga.

13. Further it is represented by the counsel appearing for the first accused that during pendency of the proceedings, the first respondent / A1 expired on 23.11.2017. Copy of the Death Certificate of A1 is also produced for perusal of this Court.

14. Considering the above facts and circumstances of the case and also the decisions relied on by the accused, this Court finds that there is no ground or valid reasons to grant leave to the petitioner herein for preferring an appeal against the Judgment of acquittal passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli, in Special Case No.29 of 2014, dated 24.03.2016

15. In the result, this Court is not inclined to grant leave to file appeal before this Court, as sought for in this



petitioner. Hence, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected in S.R.stage itself.

Sd/-

Assistant Registrar(C.O.)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

- 1.The Special Judge for Trial of Cases
under Prevention of Corruption Act,
Tirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.M.Saravanan, Advocate, SR.No. 41897

Order made in
Crl.O.P(MD)No.17310 of 2016
in
Crl.A(MD)Sr.No.23737 of 2016
Dated:-
11.01.2018

MPK

AM/SV MMS/SAR 2/25.01.2018/5P/4C