



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.06.2018

DELIVERED ON : 05.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.A.(MD)No.229 of 2013

The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thiruchirappalli
(Crime No.11 of 2003)

... Appellant/Complainant

Vs.

1.Balu @ Balasubramaniyan

2.Ramesh

3.A.Elangovan

... Respondents/A-1 to A-3

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the judgment of acquittal passed in Special Case No.33 of 2011, dated 31.01.2013 by the Special Court for trial of Cases under Prevention of Corruption Act, Tiruchirappalli and convict the respondents (A1 to A3) for the charges framed against them.

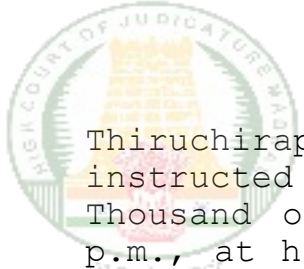
For Appellant	: Mr.M.Chandrasekaran Additional Public Prosecutor
For Respondent No.1	: Mr.T.Senthil Kumar
For Respondent No.2	: Mr.K.P.Narayanakumar
For Respondent No.3	: Mr.T.Vadivelan

JUDGMENT

Heard the learned counsel appearing on either side.

2.This appeal was filed to set aside the judgment of acquittal passed in Special Case No.33 of 2011, dated 31.01.2013 by the Special Court for trial of Cases under Prevention of Corruption Act, Tiruchirappalli and convict the respondents (A1 to A3) for the charges framed against them.

3.The case of the prosecution is that the defacto complainant constructed a new house and A2 visited the building on 18.11.2003 at 11.00 hrs and demanded a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as bribe from the complainant for assessing and fixing the house tax on 19.11.2003 at about 05.00 p.m., when the complainant met A1 at Ariyamangalam Division Office at Palakkarai,

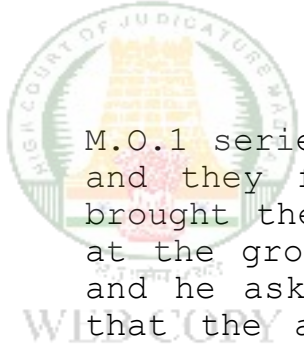


Thiruchirappalli, A1 reiterated the earlier demand and the accused instructed the complainant to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as first installment on 20.11.2003 at about 04.00 p.m., at his office and to pay the balance amount after completion of the assessment work. A trap was laid on 20.11.2003 at about 06.30 p.m., the complainant met A1 at his office, the complainant hand over Rs.10,000/- (Rupees Ten Thousand only) and A1 directed the complainant to hand over the remaining amount Rs.5,000/- (Rupees Five Thousand only) within three days and thereby, A1 and A2 committed offence under Sections 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988 and A3 committed offence under Section 12 of the Act. The prosecution has examined P.Ws.1 to 15 and marked Exs.P1 to P24 and M.Os.1 to 6 and in the cross examination, Exs.D1 to D3 were marked.

4. On the side of the appellant, it is stated that P.W.2 has purchased a hut in Trichy Municipality area. In the year 2001, he demolished the hut and constructed a house. He was issued with a notice Ex.P2 dated 08.02.2002 for utilising tap water provided by the Corporation for the drinking purpose. For the construction work, P.W.2 met the Officials and explained only bore water is being used by him. Thereafter, he received two notices Ex.P3 series dated 23.05.2002 and 21.06.2002 respectively for putting up the constructions without planning premission. The petitioner utilised 700 sq. ft. of land for constructing two shops and about three floors of residential houses in the year 2002 and complete the premises for his residential purpose in the year 2003.

5. The Revenue Inspector Balu and Bill Collector Ramesh visited the building informed P.W.2 that the building is to be assessed. On 18.11.2003, A1 and A2 visited the building and demanded a bribe of Rs.15,000/- (Rupees Fifteen Thousand only) for assessing and fixing the tax. When P.W.2 enquired about the amount of tax fixed by them, they informed that a sum of Rs.18,000/- has to be paid for half-yearly assessment. A2 demanded a sum of Rs.15,000/- to reduced the tax into Rs.9,000/- for half-yearly assessment. On 20.11.2003 at 05.00 p.m., when P.W.2 met A1 at his office, the accused demanded Rs.15,000/- (Rupees Fifteen Thousand only) and later accepted to receive Rs.10,000/- (Rupees Ten Thousand only) on 20.11.2003 and to get the balance afterwards. P.W.2 lodged a complaint before the Vigilance and Anti-Corruption Wing, Trichy. Ex.P4, the complaint was registered by P.W.14, Mr. Rengasamy, the then Inspector of Police, Vigilance and Anti-Corruption Wing, Trichy. Ex.P20, FIR is marked and the signature of the complainant in the complaint is marked as Ex.P5. A trap was laid and two official witnesses were called by the trap lying Officials.

6. P.W.3 accompanied the complainant and model phenolphthalein test was conducted and P.W.2 brought 20 currency notes in the denomination of Rs.500/- (Rupees Five Hundred only) and the notes were smeared with phenolphthalein and these notes were marked as



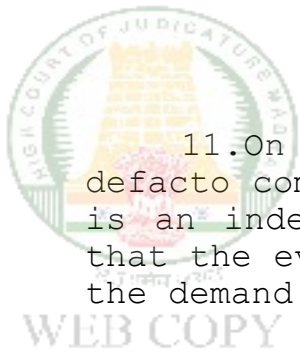
M.O.1 series. P.W.3 accompanied P.W.2 to the office of the accused and they found A2 in the office. A2 enquired whether P.W.2 has brought the money and informed him that A1 was attending a meeting at the ground floor and asked him to wait. After an hour, A3 came and he asked P.W.2 whether he has brought the money. A1 indicated that the amount was to be handed over to A3. After getting the amount, A3 kept the same in his left side pant pocket. A1 instructed P.W.2 to pay the balance amount within four or five days.

7.P.W.2 gave signal to P.W.14 and the other officials arrived there. P.Ws.2 and 3 narrated the happenings. P.W.14 introduced himself and prepared the sodium carbonate liquid in two separate water and insisted A3 to dip the fingers separately and the liquid become pink in colour and the same was collected as M.Os.2 and 3. He recovered the tainted money M.O.1 series and then subjected the pant pocket of A1 into sodium carbonate test and that liquid is separately collected as M.O.4. The pant was marked as M.O.5. P.W.14 collected M.O.1 series Rs.10,000/- (Rupees Ten Thousand only) and recovered Ex.P.7 monthly revised list book page Nos.1 to 20 for the year 2002-03 for award No.13 and he has recovered Ex.P8 also the tapal movement register from Sl.No.301 to 311. Thereafter, P.W.14 arrested the accused and also prepared observation mahazer, Ex.P 9.

8.He conducted a search at the residence of A1 and A2 and prepared the search list Ex.P10 and Ex.P11 respectively. P.W.2 also prepared Ex.P12 the seizure mahazar. He received a letter Ex.P15 from P.W.7 Thangavel, the then Junior Assistant, Ariyamangalam Division. Thereafter, P.W.15 Akbar took up the case for investigation and after completion of the investigation, he filed the charge sheet. After examination of the witness, the trial Court acquitted all the accused and this appeal is preferred against the order of the acquittal.

9.It is seen that the prosecution has examined 15 witnesses and marked 24 documents and 6 material objects and the defence side has examined 2 witnesses and marked 3 documents.

10.On the side of the appellant, it is stated that the prosecution has clearly proved that demand was made by the accused. It is stated that P.W.2 in his evidence has stated that the accused A1 and A2 visited the house and on 18.11.2003 at about 11.00 a.m., they approached P.W.2 and A2 has demanded Rs.15,000/- (Rupees Fifteen Thousand only) for reducing the tax amount in the assessment. Again P.W.2 has deposed that on 19.11.2003, at about 05.00 p.m., the appellant approached A1. He has demanded Rs.15,000/- (Rupees Fifteen Thousand only) to reduce the tax amount to Rs.9,000/- for six months and he threatened the complainant that if the amount is not paid, the assessment will be fixed at Rs.18,000/- (Rupees Eighteen Thousand only) once in six months.



11. On the side of the appellant, A1 and A2 has asked the defacto complainant whether he has brought the amount and that P.W.3 is an independent witness having no access to the complainant and that the evidence of P.Ws.2 and 3 regarding the demand is cogent and the demand is proved by the prosecution.

12. On the side of the appellant, it is stated that factum of demand and recovery were proved by P.Ws.2 and 3. and presumption is against the accused and that the currency notes are recovered and the pant in which the money is kept is subjected to sodium carbonate test and that the prosecution has proved the case.

13. On the side of the respondents, it is stated that the case of prosecution is that A1 and A2 demanded bribe for assessing the house tax but the ownership of the property is not proved by the prosecution. P.W.2 has deposed that property was not in his name and the property tax also is not in his name and at the time of lodging the complaint, the new house after demolishing the old house in Muslim Street Door No.41/2 was in the name of Allah Baksh.

14. On the side of the respondents, it is further stated that P.W.15 has deposed that he has not filed any document to show that P.W.2 was the owner of the property and that the property was only in the name of his brother Mohamed Yusuf.

15. On the side of the respondents, it is stated that P.W.15 has examined P.W.9 Rani who made entries for the assessment of the tax in the name of S.Mohamed Yusuf at No.41/2 Muslim Street, Krishnapuram, Tanjore Road and that the tax was fixed as Rs.5,072/- (Rupees Five Thousand and Seventy Two only) and that he has further deposed that whenever there is arrears of tax, the Revenue Official will demand the arrears of the tax and that P.W.4 has also deposed that it is the duty of A1 and A2 to visit the premises and to inform the defaulters to pay the tax.

16. On the side of the first respondent, it is stated that the demand is not proved. P.W.2 is not the owner and that there is no assessment in his name. Moreover, the demand for payment of arrears is suppressed by the prosecution. The prosecution has failed to consider that there was arrears of tax and that collecting arrears is the duty of the accused and that the explanation of the accused is more probable.

17. It is further stated that it is the duty of the first respondent to collect the tax and that P.W.2 has claimed that he is the owner of the property, but P.W.2 is not the owner and that P.W.9 has deposed that the property was already assessed and that the demand was for payment of arrears of the tax and that there was no demand for illegal gratification.

18. The Judgments passed by this Court in the case of **Ganesan v. State by Inspector of Police** reported in **2010 (2) MLJ (Cr1) 1206** and the Judgment passed by the Hon'ble Supreme Court in the case of **Ganapathi Sanya Naik v. State of Karnataka** reported in **(2007) 3 Supreme Court Cases (Cri)** are cited.

19. On the side of the respondent, it is argued that if two views are possible, the Court has to consider the view which is in favour of the accused.

20. The learned counsel appearing for the second respondent relied on the Judgment passed by this Court in the case of **State by Inspector of Police v. R. Mohandaoss** reported in **2010 (1) MWN (Cr.) 49**, which reads as follows:

"22. In one of the earlier decisions of the Honourable Supreme Court rendered in the case of **V.D.Jhingan Vs. State of UP [1966-Cr1.LJ-408]**, it is held that it is not necessary for the accused to establish his case by the test of proof beyond a reasonable doubt and the burden of proof lying upon the accused would be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. It is held thus:-

"It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under S.4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the Prosecution which still has to discharge its original onus that never shifts, i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."

28. The Trial Court has minutely evaluated the evidence in its comprehensive judgement and there is no compelling reasons for interfering with the finding of the



31. Again in the case of *Kallu Vs. State of MP* [2006-10-SCC-313], the Honourable Supreme Court has stated thus:-

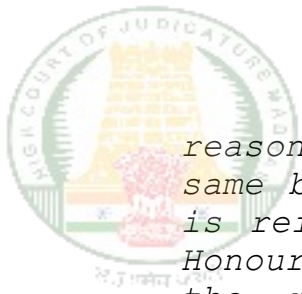
WEB COPY

"8. While deciding an appeal against acquittal, the power of the appellate court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

21. The learned counsel appearing for the second respondent relied on a Judgment passed by this Court in the case of ***D. Balasubramanian v. State by Inspector of Police*** reported in **2011 (2) L.W. (Crl.) 761**, which reads as follows:

"17. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration, but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the Prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the Prosecution. Even while invoking the provisions of the Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

<https://hcservices.ecourts.gov.in/> It is well settled that the accused is not required to establish his defence by proving beyond



reasonable doubt as the Prosecution, but can establish the same by preponderance of probability. The said principle is reiterated time and again in various decisions of the Honourable Supreme Court and it is suffice to refer to the recent decision of the Honourable Supreme Court reported in 2004-SCC-Crl-1130 (Punjabrao Vs. State of Maharashtra)."

22.On the side of the first respondent, it is stated that it is sufficient for the respondent to prove the improbabilities. It is not the duty of the respondent to prove innocence beyond the reasonable doubts.

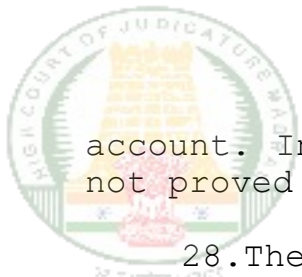
23.The case against A1 and A2 is that they used to visit the premises of the complainant and used to tell him that the tax will be assessed in a higher rate. It is further stated that on 18.11.2003 at about 11 a.m., they made a demand of Rs.15,000/- (Rupees Fifteen Thousand only) for decreasing the tax amount during the assessment.

24.On the side of the respondents, it is stated that the work of the assessment was already over and there is no necessity for A1 and A2 to demand money for assessing the building. It is further stated that it is the duty of A1 and A2 to meet the defaulters and to demand the tax arrears.

25.It is the duty of the prosecution to prove that there was no arrears of tax and the building is yet to be assessed. P.W.13 has deposed that house tax was raised to Rs.5071/- (Rupees Five Hundred and Seventy One only) during the assessment year 2002 to 2003 and the assessment order was marked as Ex.P19. P.W.13 has deposed that there was an arrears of Rs.20,142/- (Rupees Twenty Thousand One Hundred and Forty Two only) for the period of 2002 to 2003 and 2003 to 2004. In the assessment order, the Commissioner has signed on 11.12.2002 and the assessment was already over.

26.Tax was already fixed which is evident through Ex.P19 and the same is supported by the evidence of P.W.9. A1 and A2 have no authority to fix or re-fix the assessment. A1 and A2 have no such authority to reduce the tax and this statement was supported by D.W.2.

27.No notice was sent to the accused regarding the enhancement of tax. Only notice in Ex.P2 was sent in the year 2002 as if the owner was using the drinking water to construct building. Admittedly P.W.2 is not the owner of the building. As per the evidence of P.W.9, already assessment was over. As per the evidence of P.W.4, it is clear that it is the duty of the appellants 1 and 2 to visit the residence of the defaulters and to demand the arrears of tax. As per the evidence of P.W.5, the respondents referred by the respondents when two views are possible the view in favour of the accused is to be taken into



account. In the above circumstances, it is decided that "demand" is not proved by the prosecution.

28. The prosecution case is that A1 and A2 demanded illegal gratification on 19.11.2003 and received the same on 19.11.2003. On the side of the appellant, it is stated that A3 has received the bribe amount. The complainant came to the office of the accused with the demand to reduce the tax and that there is no necessity for the accused to receive arrears of the tax as the parties can pay them directly.

29. Regarding the receipt of illegal gratification, the case of prosecution is that A1 was not available at the office and A2 instructed them to wait for A1 and after some time, A1 came to the office who instructed P.W.2 to give the amount to A3. A1 and A2 did not receive the amount.

30. Regarding the recovery, the recovery is made only from A3. On the side of the prosecution, it is stated that A3 is a temporary staff in the office of A1 and A2. No documents are produced to prove that A3 was a temporary staff in that office.

31. On the side of the third respondent, it is stated that the charge against A3 is only for abetment and that there is no evidence against A3 and that prosecution has failed to prove that A3 is a temporary employee. It is wrong to state that the third respondent abetted A1 and A2 to receive bribe amount.

32. The house for which assessment is to be made is not in the name of the complainant. The building in question was in the name of one Yusuf who was not examined as a witness. Assessment for the new building is already done in the year 2002 and the same was signed by the Commissioner. A1 and A2 have no authority to reduce the tax. The assessment order was signed by the Commissioner. The application filed by P.W.2 for assessment was not marked on the side of the prosecution. The evidence of the witness reveals that it is the duty of A1 and A2 to visit the premises of the defaulters and to demand arrears of tax. From the evidence of P.W.2, it is clear that P.W.2 has not obtained the prior approval for construction of the house. The prosecution has failed to prove that P.W.2 was the owner of the property and P.W.2 has filed an application for assessment and that A1 and A2 have authority to reduce the tax and assessment which was already signed by the Commissioner. Admittedly A1 and A2 did not receive the tainted currency notes. The prosecution has failed to prove that A3 is the temporary staff in the particular office. Recovery is only from A3. Whether the amount was received towards payment of the arrears of tax or received as a bribe for A1 and A2 is not properly proved by the prosecution. Mere recovery is insufficient to prove the offence.



33. For the above reasons, there is nothing to interfere in the Judgment of the trial Court and the Criminal Appeal is devoid of merits and is dismissed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Principal District and Sessions Judge,
Trichy.
2. The Special Judge,
The Special Court for trial of Cases
under Prevention of Corruption Act,
Tiruchirappalli.
3. The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thiruchirappalli
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC To MR.K.P.NARAYANA KUMAR, Advocate SR. NO.88876

+1 CC To MR.T.SENTHIL KUMAR, Advocate SR. NO. 88742

Crl.A. (MD) No.229 of 2013

05.10.2018

MRN

TR/RP/SAR-IV(27.10.2018) 9P 9C