BAIL SLIP

The sole Accused/Appellant R.Krishnan, M/60 years S/o.Ramamoorthy was directed to be released on bail in MP(MD).1 of 2011 in CRL A(MD)No.142 of 2011 on the file of this court on 29.04.2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.11.2018**

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.A.(MD) No.142 of 2011

R.Krishnan ... Appellant

vs.

The State through
Inspector of Police,
Vigilance and Anti Corruption,
Virudhunagar. ... Respondent

PRAYER:- Criminal Appeal filed under Section 374 Cr.P.C., r/w Section 27 of Prevention of Corruption Act, 1988, to set aside the judgment of the learned Chief Judicial Magistrate cum Special Judge (Corruption Cases) Srivilliputhur dated 28.04.2011 in Spl.C.C.No.1 of 2007.

For Appellant : Mr.V.Kathirvelu senior counsel for Mr.Lakshmi Gopinathan

For Respondent : Mr.M.Chandrasekaran Additional Public Prosecutor

JUDGMENT

This criminal appeal has been filed to set aside the judgment dated 28.04.2011, passed in Spl.C.C.No.1 of 2007 by the learned Chief Judicial Magistrate cum Special Judge (Corruption Cases), Srivilliputhur, Virudhunagar District.

2.The case of the prosecution is that the defacto complainant namely, Tr.A.S.Chandran was running two cement tiles companies, one is in the name and style of M/S Chandravilas Cement Tiles Company (Interstate purchase & Local sales fully taxable) and another is M/s.Anguvilas Cement Tiles Company (Purchase of Cements, Jally, Iron rods and manufacturing slabs, Vatta etc,-Non taxable upto 10 lakhs). The ACTO-I, Sivakasi, is the assessing authority for sales tax for both these concerns.

3.Since the defacto complainant has not produced the accounts, the appellant had passed a final assessment order to the company namely, M/S Chandravilas Cement Tiles Company (Interstate purchase & Local sales fully taxable) on 18.02.2005 by imposing Rs.52,858/- as sales tax, surcharge and penalty. But in respect of Sri Anguvilas Cement Tiles Company account was yet to be submitted for assessment year 2002-2003.

4.On 14.03.2005 at about 06.15 p.m., at Chandran Vilas Cement Tiles Company, the appellant demanded a sum of Rs.5,000/- as bribe and subsequently, agreed to receive Rs.500/- as an initial payment from the complainant for revising the assessment order, which was already passed by him in respect of Chandran Vilas Cement Tiles Company. Knowing that he could not revise the final assessment order passed by him on 18.02.2005, the appellant on 15.03.2005 at about 03.50 p.m., at the office of the ACTO-I, Sivakasi, demanded the bribe amount from the complainant saying that he would receive Rs.500/- if the complainant gave a requisition that no business was transacted during 2002-2003 by the Anguvilas Cement Tiles Company in the letter head of the said company.

5.In pursuance of the above said demand, on 17.03.2005 at about 10.00 a.m., at the office of ACTO-I, Sivakasi, the appellant after receiving the requisition letter from the complainant, demanded bribe for himself from the complainant stated that whether he had brought the amount of Rs.500/-, which was demanded by the appellant, and obtained Rs.500/- for himself as gratification other than legal remuneration from the complainant A.S.Chandran as a motive or reward for doing favour in respect of Sri Anguvilas Cement Tiles Company by accepting the accounts yet to be submitted by the said company for the year 2002-2003 and thereby, the appellant has committed the offence punishable under Sections 7, 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

6.After receiving the complaint, P.W1/the District Collector, preferred the complaint before the respondent police and the respondent police registered a case against the appellant and had organized a trap and summoned the independent witnesses and introduced P.W2 to them and conducted the pre-trap demonstration proceedings and coated the phenolphthalein powder on the money, which was meant for giving to the appellant and prepared the entrustment mahazar. P.W2 and P.W3 were asked to proceed to the office of the appellant, in which the appellant was working. At the office of the appellant, the defacto complainant, subsequent to the demand made by the appellant, handed over the said bribe amount to the appellant and the same was accepted by him and kept the money in his pocket.

7.After receiving the pre arranged signal from P.W2, the Trap Laying Officer, went inside the office of the appellant and recovered the money as bribe from the appellant and conducted the phenolphthalein test and the result was positive. After preferring the mahazar by the the Trap Laying Officer, the money, which was recovered from the appellant was compared with the serial number, which was already noted by them in the entrustment mahazar and thereafter, the case has been handed over to the Investigating Officer for investigation.

8.After completing the investigation, the respondent police laid a charge sheet against the appellant. In order to prove the case of the prosecution, as many as 10 witnesses were examined, 28 documents were marked and also 5 material objects were exhibited. After completion of prosecution evidence when incriminating circumstances culled out from the prosecution witnesses, put before the appellant, the same has been denied as false by the appellant. On the side of the appellant, 1 witness was examined and 2 documents were marked. After completing the trial, the learned Special Judge, found the accused guilty for the below mentioned offences, sentenced the appellant to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- in default, to under go 3 months simple imprisonment for the offence under Section 7 of the PC Act and sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a sum of Rs.3,000/- as fine in default, to undergo 6 months simple imprisonment for the offence under Sections 13(2) r/w 13(1) (d) of the said Act, against which, the convict has preferred this appeal before this Court.

9.This Court has clearly perused the entire records and also heard the arguments advanced by the learned counsel on either side independently.

10.The learned counsel for the appellant would submit that since the defacto complainant has not produced the accounts, the appellant has called for the accounts by issuing show cause notice to the company of the defacto complainant namely, M/S.Sri Chandravilas Cement Tiles Company on 01.02.2005. For the said notice, reply was given by one Karnamaharajan, who was said to be the Accountant of the defacto complainant, on 05.02.2005. Final order was passed by the appellant on 18.02.2005, as the explanation given by the accountant was not satisfied. If the appellant is having power to pass the final assessment order, the same cannot be refused by the defacto complainant. If the appellant wanted any bribe, he could have demanded the money before passing the final assessment order.

11.Further, the learned counsel for the appellant would submit that the attitude and character of the complainant, are not good and since the final assessment order has been passed against the company of the defacto complainant, neither he had paid the money nor he filed any appeal. But, he filed a false case as against the appellant before the respondent police. Further, he would submit that on 15.03.2005, P.W2 went to the station alone but the Investigating Officer stated that the complainant came with his accountant Karnamaharajan. Therefore, the presence of the said

Karnamaharajan on the date of giving complaint was wilfully hidden by the respondent police and in this case, the said Karnamaharajan has not been examined, which is fatal to the case of the prosecution.

12.Due to previous motive, the defacto complainant filed a case against the appellant. Since the appellant has passed the final assessment order, there is no need to demand the money and further, the assessment order says that an appeal can be filed and therefore, there is no need for the complainant to ask for revised order to the appellant, which was failed to be considered by the learned Special Judge, which warrants interference of this Court.

13.The learned counsel for the appellant would submit that the main ingredients of the bribe case especially in the trap case, the demand and acceptance have not been proved and also the recovery has not been proved by the prosecution. Further, the learned counsel would submit that there are material contradictions between the defacto complainant and the shadow witness and also the Trap Laying Officer. The shadow witness has clearly stated that they have not gone into the office and they have waited outside of the office of the appellant and therefore, there is no independent witnesses. The appellant received a sum of Rs.500/- only for the purpose of payment of tax not as bribe, the trial Court failed to consider the said fact. On reading of the records, there is a material contradiction especially, the non examination of the accountant namely Karnamaharajan is fatal to the case of the prosecution.

14.Further, the learned counsel for the appellant referred Sections 55, 14 and 16 of the TNGST Act and as per the said Sections, an Assessment Officer can assess the tax unless the defacto complainant shows that there is a mistake apparent on the face of the record. In this case, the prosecution has not pointed out what is the error apparent on the fact of the records in the assessment order passed by the appellant. Therefore, the demanding of money for reversing the finding is not acceptable and further, the motive of the complainant has also been clearly established by examining the oral and documentary evidence. Ex.B1 shows that what are the documents have been produced by the appellant. Since there is a material contradiction, the prosecution has failed to prove its case beyond any reasonable doubt, which has not been considered by the trial Court, which warrants interference of this Court.

15.The learned Additional Public Prosecutor would submit that there is a dispute in the final assessment order passed by the appellant. The allegation is that after passing the final assessment order, the appellant demanded Rs.5000/- as bribe. Since the complainant was not willing to give any bribe money, he approached the respondent police, to file the complaint and thereafter, the respondent police received the complaint and registered a case and summoned the independent witnesses and introduced P.W2 to him and conducted the pre-trap demonstration proceedings and coated the phenolphthalein powder on the money, which was meant for giving to the appellant and prepared the entrustment mahazar also and noted down the serial numbers of the tainted money. Subsequently, after destroying all the phenolphthalein test solution and washed their hands, on 17.03.2005, the independent witnesses and the shadow witnesses and the Investigating Officer went to the office of the appellant. Thereafter, P.W2 and P.W3 went into the office of the appellant and as directed by the appellant, P.W2 given the tainted money of Rs.500/- and after getting prearranged signals from the defacto complainant and from the independent witness, the trap laying officer went into the office of the appellant and conducted phenolphthalein test and recovered the money from the appellant. After getting the analysis report, the respondent police filed a charge sheet for the offence under Sections as stated above and the same has been taken on file in in Spl.C.C.No.1 of 2007 by learned Chief Judicial Magistrate cum Special Judge (Corruption Cases) Srivilliputhur.

16.The documents, Ex.P5 and Ex.P8, clearly shows that the appellant demanded money as bribe only after passing the final assessment order. Only to revise the said final assessment order, the appellant demanded money, which has been clearly demonstrated and established by the prosecution. On reading of the entire records, the appellant himself admitted that he received a sum of Rs.500/-, which was considered by the trial Court. Once the demand and acceptance are proved in the manner known to law, the Court can draw statutory presumption under Section 20 of P.C.Act. Though some of the prosecution witnesses have turned hostile, their evidence cannot be rejected totally. They can be relied on the limited purpose only. Therefore, Section 20 of the Act, apply to this case. No doubt the said legal presumption is rebuttable, it is for the accused to rebut the presumption that the recovered money is not a bribe money.

17.Heard the learned counsel on either side and perused the records carefully.

18.The case of the prosecution is that on 14.03.2005 at about 06.15 p.m., the appellant demanded a sum of Rs.5,000/- as bribe and subsequently, agreed to receive Rs.500/- for revising the assessment order in respect of Chandran Vilas Cement Tiles Company, knowing that he could not revise the final assessment order and accepted Rs.500/- as bribe, which is also subsequently, recovered by the Trap Laying Officer. The evidence of the prosecution witnesses and the documents marked by the prosecution clearly prove that the demand, acceptance and recovery of the bribe money.

19.On reading of the evidence of Sanction Authority, Ex.P1, it is seen that the prosecution has proved that the appellant has assessed the tax for the year 2002-2003 to the company of the defacto complainant and passed the final assessment order. Further, P.W2, who has preferred the complaint before the respondent police, has spoken about the demonstration proceedings and subsequently, on 14.03.2005 at about 06.15 p.m., the appellant demanded a sum of Rs.5,000/- as bribe and subsequently, agreed to receive Rs.500/- as an initial payment from the complainant for revising the assessment order and accordingly, the appellant demanded and accepted Rs.500/- from the complainanant on 15.03.2005 at about 03.50 p.m., at the office of the ACTO-I, Sivakasi.

20.P.W1 identified, the signature and also the hand writing of the appellant and he has also spoken about the handwriting found in Ex.P5. P.W3 is the Junior Employment Officer, District Employment Office, who is shown as shadow witness, has spoken about the demand and acceptance made by the appellant. P.W5 is the Commercial Tax Officer and he has spoken about the procedure for passing and revising the final assessment order. P.W6 is the Superintendent of the said tax office, Sivakasi, who has clearly spoken about the diary dated 31.03.2005 and about the arrest of the appellant. P.Ws., 9 and 10 spoken about the phenolphthalein test. P.W.11 is the Trap Laying Officer, who has spoken about the registration of the FIR and also the trap proceedings and the recovery of the tainted money and also the conduct of the sodium carbonate solution test.

21.In this case, in order to prove the demand and acceptance, the Trap Laying Officer corroborated with the evidence of P.W2 and P.W3 and also with the recovery, P.W2 spoken about the demand and acceptance, P.W3 spoken about the complaint lodged by the defacto complainant and also he accompanied with P.W2 and the defacto complainant clearly spoken about the proceedings of the Trap Laying Officer. P.W4 has also clearly spoken about the signature of the appellant and P.W5 has spoken about the procedures of the final assessment order and the possibility of revising the same. P.W6 has clearly spoken about the diary dated 31.03.2005. P.W7 has clearly spoken about the handwriting and signature of the appellant. From the records, on reading of the entire evidence produced by the prosecution and also the documentary evidence, it is seen that the prosecution has proved its case.

22.From Ex.P11, it is seen that though the said Karnamaharajan gave the reply to the show cause notice, he was not examined before the Court below. On reading of the entire records carefully placed before the Court below, the said Karnamaharajan was examined by the Investigating Officer and also recorded his 161 statement. Further, it is seen that he is the authorised person to give the reply to the show cause notice on behalf of the company of the defacto complainant.

23.From the entire record, it is seen that the prosecution was not in a position to examine the said Karnamaharajan to prove its contention, which was made on 14.03.2005, 15.03.2005 and 17.03.2005 and further, it is seen that the said Karnamaharajan was examined by the Investigating Officer and also he was cited as L.W3 and due to his death, he was not examined before the trial Court. Therefore, the non examination of the said Karnamaharajan before the trial Court is not fatal to the case of the prosecution.

24.The main defence taken by the appellant is that since the appellant has passed the final assessment order, there is no need to demand the money and further, the assessment order says that an appeal can be filed and therefore, there is no need for the complainant to ask for revised order to the appellant. From the witnesses, it is seen that in order to give the favorable revised order, the appellant demanded money as bribe from the defacto complainant. Therefore, the contention of the appellant that there is no need to demand the money is not acceptable and hence, the defence taken by the appellant is rejected.

25.Further, the another contention taken by the appellant is that he received the amount of Rs.500/- only for tax, not as bribe, whereas, there is no evidence to prove the same, which contention is not acceptable one and the same is unnatural one. In order to escape from the clutches of law, the appellant introduced the said defence but the same is an after thought.

26.On reading of the entire records, the appellant himself admitted that he received a sum of Rs.500/-. P.W1 has clearly stated that the appellant received a sum of Rs.500/- as bribe, which was considered by the trial Court. Once the demand and acceptance are proved in the manner known to law, the Court can draw statutory presumption under Section 20 of P.C.Act.

27.In this case, the evidence of P.W2 discloses the initial demand made by the appellant and the independent witnesses have clearly stated about the demand and acceptance. From the evidence of P.W3/the shadow witness and P.W5, it is seen that the acceptance and recovery are proved.

28.After reading of the entire materials, which were produced before this Court, the judgment passed by the trial Court and also the contention raised by the learned counsel on either side, this Court finds that there is no merit in this appeal and finds that there is no sound and valid reasons to set aside the judgment passed by the trial Court.

29.Further, the prosecution has proved its case beyond any reasonable doubt and the demand, the acceptance and recovery are also proved beyond any reasonable doubt by the prosecution and finds that the appellant has committed the offence under Sections as stated above.

30.Accordingly, this Criminal Appeal is dismissed and the judgment dated 28.04.2011 passed by the learned Chief Judicial

Magistrate cum Special Judge, (Corruption Cases), Srivilliputtur, Virudhunagar District, in Spl.C.C.No.1 of 2007 is hereby confirmed. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure. The trial Court is directed to take immediate steps to secure the accused to commit him in prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate,
Special Judge for Corruption cases,
Srivilliputhur.

2.The Superintendent,
Central Prison, Madurai.

3.The Inspector of Police,
Vigilance and Anti Corruption,
Virudhunagar.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer,
Criminal Records Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.POLAX LEGAL SOLUTIONS, Advocate Sr. No. 98054

Crl.A.(MD) No.142 of 2011
30.11.2018

SVN(CO)
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