BAIL SLIP

The Appellant/Accused Viz. Kaliyaperumal, S/o.Ramasamy was already released on bail vide this court order dated 01.08.2011 in M.P.(MD).1 of 2011 in CRL A(MD).210 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.11.2018**

CORAM :

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

Crl.A.(MD) No.210 of 2011

Kaliyaperumal ... Appellant/Accused

vs.

State represented by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Thanjavur.
Crime No.3 of 2002 ... Respondent/Complainant

PRAYER:- Criminal Appeal filed under Section 27 of the P.C.Act r/w 374(ii) of the Code of the Criminal Procedure, to quash the order dated 30.06.2011 passed by the learned Special Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam in Spl.Case No.1 of 2003.

For Appellant : Mr.S.Shanmugavelayutham senior counsel for Mr.M.Suri

For Respondent : Mr.M.Chandrasekaran, APP

JUDGMENT

This criminal appeal has been filed to quash the order dated 30.06.2011 passed by the learned Special Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam in Spl.Case No.1 of 2003.

2.The case of the prosecution is that one Gunasekaran / P.W2 desired to get community certificate and a certificate for having two female children not a male child. After applying for the above said certificates, when P.W2 approached the accused at his office cum residence on 28.03.2002, the appellant demanded a sum of Rs.1,000/- for issuing such certificates as gratification. When P.W2 pleaded his inability to pay a sum of Rs.1,000/- as gratification for the said purpose, the appellant reduced his demand to Rs.500/- and again on 08.04.2002, when P.W2 again pleaded at his office, the appellant reduced his demand to Rs.300/-.

3.Since P.W2 was not willing to give the money as bribe, he filed a complaint before the respondent police and subsequently, after registering the case, the respondent police summoned the independent witness / P.W3 and introduced P.W2 and conducted pre-trap demonstration proceedings and coated the phenolphthalein powder on the money, which was meant for giving to the accused 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, P.W2 and P.W3 were asked to proceed to the office cum residence of the appellant at Melatur on 08.04.2002. On 09.04.2002 at about 02.35 p.m., when the complainant and the independent witness / P.W3 approached the appellant, he reiterated his demand made on 28.03.2002 and on 08.04.2002 and obtained Rs.300/- from the complainant as gratification. Accordingly, the complainant handed over the money to the appellant.

4.Thereafter, by getting prearranged signals from PW2 / defacto complainant the trap laying officer went and conducted phenolphthalein test and recovered the money from the appellant / accused and thereafter, he was arrested and remanded to judicial custody. After getting the analysis report, the respondent police filed a charge sheet for the offence under Sections 7, 13 (1) (d) r/w 13 (2) of PC Act against the appellant and the same has been taken on file in Spl.Case No.1 of 2003 and the charges were framed against the appellant by the learned Special Judge / Chief Judicial Magistrate, Thanjavur.

5.Before the trial Court, in order to prove the case of the appellant, on the side of the appellant as many as 15 witnesses were examined and as many as 19 documents were marked and 5 material objects were marked. After completing the prosecution evidence when incriminating circumstances culled out from the prosecution witnesses put before the appellant / accused, the same has been denied as false by him.

6.After completing the trial, hearing the arguments on either side and perused the records, the learned Special Judge cum Chief Judicial Magistrate, Thanjavur, has convicted the appellant for the offence under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2,500/- in default, to undergo rigorous imprisonment for a period of 3 months for the offence under Section 7 of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.2,500/- in default, to undergo rigorous imprisonment for a period of 3 months for the offence under Sections 13(1)(d) r/w 13(2) of Prevention of Corruption Act and the sentences were run concurrently, against which, the appellant / convict has preferred the present appeal.

7.The learned counsel for the appellant mainly would contend that the sanction accorded by the Sanction Authority / P.W1 is null and void. He would further contend that the authority has not applied his mind on the documents produced by the Investigating Agency before according sanction. P.W1 himself has admitted in the cross - examination that Ex.P1 / the sanction order was verified by Shirasthar and initialled the same, which was placed before him for his signature and he has signed the sanction order without applying his mind. The above admission made by P.W1, will amount to non application of mind, which will vitiate the sanction order.

8.Further, the learned counsel for the appellant would contend that the other reasons for convicting the appellant are unsound and unsustainable in law and the ingredients for the offence under Section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act is not made out and in any event the sentence is excessive.

9.In order to support his contention, the learned counsel for the appellant relied on the following judgments :

(i) ***Behari Lal Gupta Vs. State of Himachal Pradesh*** reported in ***1984 CRI.L.J.1809.***

(ii) ***State of Madhya Pradesh Vs. J.B.Singh*** reported in ***2000 CRI.L.4591.***

(iii) ***State of Karnataka Vs. Ameer Jan*** reported in ***2008 CRI.L.J.347.***

(iv) ***R.S.Nayak Vs. A.R.Antulay and Padmakar Balkrishna Samant Vs. Abdul Rehman Antulay and another*** reported in ***AIR 1984 Supreme Court 684.***

10.Further, the learned counsel for the appellant would submit that there was a loan transaction between the appellant's wife and the defacto complainant. When the appellant's wife asked the defacto complainant a sum of Rs.1,000 as interest, he has not paid the same and paid a sum of Rs.300/- to the appellant on the date of occurrence and hence, the amount, which was owned by the appellant's wife is not a bribe amount. A promissory note / Ex.D1 executed by the defacto complainant in favour of the wife of the appellant was also produced before the trial Court and the same has not been considered during trial. Therefore, he submit that the defence taken by the appellant was not considered by the trial Court and the same warrants interference of this Court.

11.Further, the learned counsel for the appellant would submit that Except the shadow witness / P.W3, P.Ws., 2, 5, 6 and 7 have not supported the case of the prosecution. P.W1 / the Sanction Authority has not stated about the securitization of the entire records and only he put the signature in the note prepared by the complainant. Therefore, the prosecution has not proved its case beyond any reasonable doubt and also the defence taken by the appellant has proved that there was a loan transaction between the wife of the appellant and the defacto complainant. In this case, the demand and acceptance of bribe has not been proved and the learned Special Judge, failed to consider the evidence of the prosecution and also the defence taken by the appellant, which warrants interference of this Court.

12.The learned Additional Public Prosecutor appearing for the State would submit that on 28.03.2002 at request of the defacto complainant, the Village Administrative Officer has received 3 applications from the defacto complainant with respect to issuance of certificates regarding no male issue, Nativity and Community certificate. After due enquiry recommended for issuance of the certificates, those applications with recommendations were handed over to the defacto complainant on 02.04.2002. Thereafter, when the defacto complainant approached the appellant for the purpose of obtaining the said certificates, the appellant the then Revenue Inspector demanded a sum of Rs.1,000/- as bribe.

13.The defacto complainant while explaining his financial position, the appellant reduced the bribe amount from Rs.1,000/- to Rs.500/- and thereafter, reduced the amount to Rs.300/-. During cross examination, though P.Ws., 1 and 2 have turned hostile, on reading of the entire chief examination of the prosecution witness, it is clearly stated about the demand, acceptance and recovery and hence, the defence taken by the appellant is not a proper one. Further, on a reading of the 161 statement given by the Sanction Authority and also the sanctioned order, it is seen that the Sanction Authority has gone through the entire materials, which were placed before the trial Court and accorded the sanction. Therefore, the sanction given by the Sanction Authority is a valid one. Therefore, the defence taken by the appellant is not proved in the manner known to law. Under such circumstances, the trial Court has rightly appreciated the oral and documentary evidence and has rightly considered the case of the prosecution, which does not warrant interference of this Court.

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

15.It is the case of the prosecution that the defacto complainant / P.W2 desired to get community certificate and a certificate for having two female children not a male child, after applying for the above said certificates, when P.W2 approached the accused at his office cum residence on 28.03.2002, the appellant demanded a sum of Rs.1,000/- for recommending for issuance of a certificate as gratification from the defacto complainant. When P.W2 pleaded his inability to pay a sum of Rs.1,000/- as gratification for the said purpose, the appellant reduced his demand to Rs.500/- and again on 08.04.2002, when P.W2 again pleaded his inability at his office, the appellant reduced his demand to Rs.300/-.

16.Since P.W2 was not willing to give the money as bribe, he filed a complaint before the respondent police. Subsequently, after registering the case, the respondent police summoned the independent witnesses/P.W3 and another introduced P.W2 to them and conducted the pre-trap demonstration proceedings. Thereafter, pursuant to the appellant / accused demand, on 09.04.2002 at about 02.35 p.m., P.W2 went to the office of the appellant and handed over the money to the appellant and after getting prearranged signals from PW2 / defacto complainant, the trap laying officer went into the office of the appellant and conducted phenolphthalein test and recovered the money from the appellant / accused. After getting the analysis report, the respondent police filed a charge sheet for the offence under Sections 7, 13 (1) (d) r/w 13 (2) of PC Act against the appellant and the same has been taken on file in Spl.Case No.1 of 2003 and the charges have been framed against the appellant by the learned Special Judge / Chief Judicial Magistrate, Thanjavur.

17.On a reading of the entire evidence of P.W1, who is the then District Revenue Officer, Thanjavur, it could be seen that P.W1 has not applied his mind and mechanically put his signature in the sanction order. On reading of the sanction order and also the 161 statement made before the investigating officer, it is seen that P.W1 accorded the sanction in accordance with law. Though during cross examination, P.W1 has stated that he put his signature in the note prepared by the appellant that he is not aware of the ingredients of the criminal provision, it will not vitiate the case of the prosecution.

18.A reading of the sanction order clearly shows that P.W1 has gone through all the materials, ie., FIR, the statement of the witnesses recorded by the Investigating Officer, the report of the phenolphthalein test and the report of the medical analysis, P.W1 has accorded the same. The unaware of the ingredients of the criminal provision is not a fatal to the case of the prosecution and the same will not vitiate the case of the prosecution.

19.Admittedly, in this case, the appellant himself admitted that he was working as Revenue Inspector of Thanjavur District and also he is the public servant and on reading of the entire records, it is seen that the sanction accorded by P.W1 is a valid one. Therefore, the contention raised by the learned counsel for the appellant is not acceptable.

20.On reading of the evidence of P.W1, it is seen that on 28.03.2002, the Village Administrative Officer has received 3 applications from the defacto complainant with respect to the certificates as stated above that the enquiry has been conducted, that after enquiry, the applications were recommended for issuance of the certificates and along with the said recommendations of the VAO, the applications were handed over to the defacto complainant on 02.04.2002. Thereafter, the defacto complainant approached the appellant for the purpose of obtaining the said certificates. The appellant, the then Revenue Inspector, demanded a sum of Rs.1,000/- as bribe. The defacto complainant while explaining his financial position, the appellant reduced the bribe amount from Rs.1,000/- to Rs.500/- and thereafter, reduced the amount to Rs.300/-.

21.After the recovery was made, the appellant has stated that the alleged bribe amount was only an interest amount due to be paid to the wife of the appellant. The pro note in this regard was shown to the complainant during cross examination of the defacto complainant, who accepted the execution of a promissory note in favour of appellant's wife.

22.On reading of the entire materials, the main defence taken by the appellant is that the defacto complainant borrowed a sum of Rs.15,000/- from the appellant's wife and he has given the interest amount in every month. But there is no evidence to prove the same and only in order to escape from the clutches of law, the appellant introduced the said defence but the same is unnatural one and an after thought. Under these circumstances, the defence taken by the appellant i.e., the defacto complainant borrowed a sum of Rs.15,000/-, from the wife of the appellant for which he received a sum of Rs.300/- as interest, is not acceptable and the same is rejected.

23.On reading of the entire records, the appellant himself admitted that he received a sum of Rs.300/-. P.W1 has clearly stated that three demands were made by the appellant for issuing certificates for the purpose as stated above and regarding the same he received a sum of Rs.300/- 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. Since because some of the prosecution witness have turned hostile, their evidence cannot be thrown away totally. They can be relied on the limited purpose.

24.In this case, the evidence of P.W2 discloses the initial demand made by the appellant and hostile witnesses have clearly stated about the demand and acceptance. From the evidence of P.W3 / the shadow witness and P.W14, it is seen that the acceptance and recovery are proved.

25.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 the decisions referred to by the learned counsel for the appellant are not applicable to the present case and finds that there is no sound and valid reasons to set aside the judgment of the trial Court.

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

27.Accordingly, this Criminal Appeal is dismissed and the order dated 30.06.2011 passed by the learned Special Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam in Spl. Case No.1 of 2003 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(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To
1.The learned Special Judge cum
Chief Judicial Magistrate,
Thanjavur, Kumbakonam.

2. DO, THROUGH
The Principal Sessions Judge, Thanjavur.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Thanjavur.

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)

+1CC TO MR.M.SURI, Advocate Sr. No. 97961

Crl.A.(MD) No.210 of 2011
30.11.2018

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