

**BAIL SLIP**

Muniasamy, Petitioner/Appellant, S/o.Velu was released on bail as per the order of this Court dated 29.07.2011 made in MP 1 of 2011 in CrI A(MD)No.215 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

CrI.A.(MD)No.215 of 2011

and

CrIOP(MD)No.23704 of 2016 in CrIA (MD)No.215 of 2011

CrI.A.(MD)No.215 of 2011

Muniasamy ...Appellant/Accused

Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Corruption Wing,
Ramanathapuram.
[Crime No.05 of 2002]

...Respondent/complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records of the Chief Judicial Magistrate, Ramanathapuram in CC No.1 of 2005 and set aside the judgment and conviction dated 05.07.2011 by the Chief Judicial Magistrate, Ramanathapuram in CC No.1 of 2005 and acquit the appellant.

For Appellant : No Appearance

For Respondent : Mr.K.K.Ramakrishnan

Additional Public Prosecutor

CrIOP(MD)NO.23704 of 2016

Muniasamy(Died) ...Appellant/Accused

1.Kannamma

<https://hcservices.ecourts.gov.in/hcservices/>

2.M.Kumaresan

3.Meena



4.Anandavalli

...Petitioners/LRs of the deceased
appellant

Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Corruption Wing,
Ramanathapuram.
[Crime No.05 of 2002]

...Respondent/complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to grant leave to continue the criminal appeal by impleading the LRs of the deceased Munisamy as petitioners in CrIa (MD)No.215 of 2011.

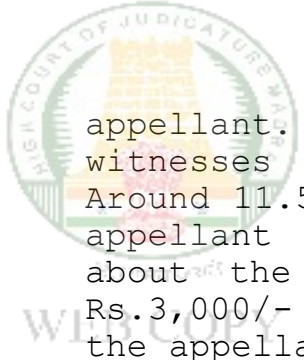
For petitioners : No Appearance
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

J U D G M E N T

The Criminal appeal has been filed seeking to set aside the judgment dated 09.07.2010 made in Spl.CNo.9 of 2007 on the file of the Special Judge cum Chief Judicial Magistrate, Tuticorin and the criminal original petition has been filed to grant leave to continue the criminal appeal by impleading the LRs of the deceased Munisamy as petitioners in CrIa(MD)No.215 of 2011.

2.The case of the prosecution is that when the de facto complainant had approached the appellant seeking licence for starting finance company, the appellant demanded Rs.3,000/- and the de facto complainant since was not willing to pay the bribe amount, made a complaint and based on the complaint, a case was registered.

3.Based on the FIR, trap was planned by the Trap Laying Officer (herein after shall be referred to as 'TLO'). Two independent witnesses, namely one Bose and Koori (PW.4), who are known as shadow witnesses were summoned by the TLO and subsequently, PW.2, and the shadow witnesses were present at the Office of the Vigilance and Anti Corruption, Ramanathapuram on 05.09.2002 and the complainant was also present as directed by the TLO. The TLO explained about the complaint given by PW.2, to the shadow witnesses and conducted a pre demonstration proceedings. PW.2 brought Rs.3000/- (Rs.100 x 30) and the serial number of the currencies were noted in the entrustment mahazar (Exp.7) was prepared by TLO and later coated the currencies with phenolphthalein powder and gave them to PW.2. The TLO instructed PW.2 to approach the appellant and if the appellant demands the money, then only he should give the money to the appellant. PW.4 was also directed to accompany PW.2 and instructed them to show signal, after paying the money to the



appellant. Accordingly, on 05.09.2002, the TLO, PW.2, shadow witnesses and Police Officials, went to the place of occurrence. Around 11.55 pm, the PW.2 and PW.4 went inside the residence of the appellant and the appellant invited them and when PW.2 enquired about the licence the appellant asked whether he had brought Rs.3,000/- as demanded by him earlier, PW.2, replied yes and when the appellant asked the money PW.2 gave Rs.3,000/- to the appellant, the appellant received the money and kept it on his table.

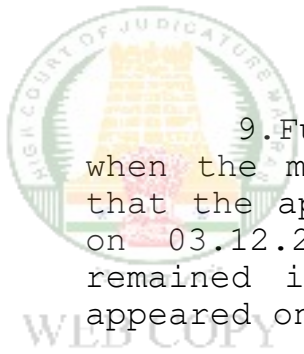
4. Then PW.2 came out of his house and gave the pre arranged signal to the TLO. On receiving the pre arranged signal from PW.2, the TLO along with the shadow witness entered into the residence of the appellant and introduced himself to the appellant and conducted phenolphthalein test, which proved positive. Then the TLO recovered the tainted money through recovery mahazar and obtained signatures from the appellant and shadow witnesses. Then the TLO placed the matter before the Investigating Officer - PW.11. The Investigating Officer after conducting investigation laid a charge sheet against the appellant for the offence under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 [herein after referred to as 'PC Act'] before the, Assistant Sessions Judge cum Chief Judicial Magistrate, Ramanathapuram.

5. On the side of the prosecution 11 witnesses as PW.1 to PW.12 were examined, 28 documents as Ex.P.1 to Ex.P.28 were marked and 3 material objects as MO.1 to MO.11 were exhibited.

6. After completion of the prosecution side evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant and the same was denied as false. On the side of the neither oral nor documentary evidence was let in.

7. After completion of the trial and after hearing the arguments on either side, the Assistant Sessions Judge, found the appellant / accused guilty and convicted and sentenced him to undergo rigorous imprisonment for a period of one year and imposed a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months, for having committed offence punishable under Section 13(2) r/w 13(1) (d) of PC Act.

8. Aggrieved against the conviction and sentence, the appellant has preferred the present appeal. During the pendency, the appellant died and the legal heirs of the deceased appellant filed a petition seeking to grant leave and filed a petition to condone the delay of 1707 days in filing the leave petition, which was allowed on 08.02.2016 and the petition to grant leave is CrIOP (MD) No.23704 of 2010, which is pending. The reasons stated are not satisfactory to this Court to grant leave.



9. Further on merits, the petitioners in CrIOP are not present when the matter came for hearing on the learned counsel submitted that the appellant died. Hence the matter was directed to be listed on 03.12.2018 for production of death certificate. The matter remained in the list. Today when the matter was taken up, none appeared on behalf of the petitioners.

10. Since this appeal is pending from the year 2011 and non appearance of the petitioners in CrIOP, this Court is inclined to dispose of this appeal on merits.

11. Heard the learned Additional Public Prosecutor appearing for the State and perused the records placed on record.

12. The learned Additional Public Prosecutor would submit that the evidence of PW.2, the de facto complainant, PW.4- shadow witness, PW.10 -TLO, and, Ex.P.2 application, Ex.P.5- the complaint, Ex.P.6 FIR, Ex.P.7 Entrustment Mahazar, Ex.P.12, the Chemical Analysis Report, and Ex.P.8. Recovery Mahazar the prosecution has proved its case that the appellant had demanded Rs.3,000/- from the de facto complainant for issuance of licence for starting finance company and accepted the same and the recovery is also proved. The phenolphthalein test is also proved positive. Therefore, the trial Court has rightly concluded that the appellant had committed the offence and convicted and imposed sentences as mentioned above. Therefore, there is no reason to interfere with the judgment of the trial Court. The Special Judge has rightly appreciated the evidence and considered the materials placed on record and elaborately discussed the matter and rightly convicted the appellant and sentenced. Therefore, there is no reason to interfere with the judgment of the Special Judge.

13. A reading of the complaint Ex.P.5 of PW.2, shows that he has clearly spoken about the demand by the appellant on 02.09.2002 and 04.09.2002 and he has also corroborated his complaint in his evidence and had explained in detail right from the lodging of complaint and till the trap proceedings completed. From the evidence of PW.2 and the complaint Ex.P.5 it is clear that the appellant demanded Rs.3,000/- from the de facto complainant and accepted the same, which was also subsequently recovered by the TLO.

14. A reading of the evidence of PW.10 TLO shows that he had clearly spoken about the receipt of the complaint and summoning of the independent witnesses, conduct of pre trap demonstration, preparation of entrustment mahazar, the execution of the trap, phenolphthalein test, recovery of tainted money and preparation of recovery mahazar. So, from the evidence of TLO, it is evident that the recovery of the tainted money, received as illegal gratification other than the legal remuneration.



15. A reading of the evidence of PW.4 shadow witness, reveals that he had deposed about his summoning, explanation of the complaint to him, demonstration of pre trap proceedings and their meeting with the appellant, the demand made by the appellant, handing over the tainted money to the appellant by the de facto complainant, the acceptance of the money by the appellant. Further his evidence reveals the sodium carbonate solution test, the recovery of tainted money from the appellant by the TLO, preparation of recovery mahazar and their affixing signature in the same. This PW.4's evidence has corroborated the evidence of PW.2 and the TLO, in respect of the demand, acceptance and recovery of the money.

16. Evidence of PW.8 shows the duty allotted to the appellant.

17. Ex.P.12 the report of chemical analyst shows the presence of sodium carbonate and phenolphthalein, in the solution exhibited as MO.1 to MO.3.

18. On a conjoint and careful reading of the evidence of PW.1, PW.2, PW.4, PW.8 and PW.10 and Ex.P.1, Ex.P.2, Ex.P.5, Ex.P.7, Ex.P.9, Ex.P.12, and Ex.P.17, it is clear that the prosecution has proved the demand, acceptance and recovery beyond reasonable doubt.

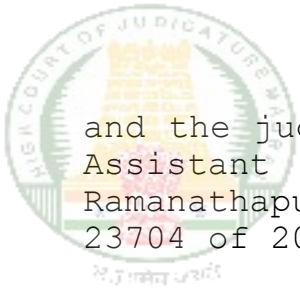
19. In the grounds of appeal it is stated that a false case has been foisted against the appellant, only due to the previous enmity. Though he cited previous enmity as a reason for the complaint, the same is not proved in the manner known to law. Therefore, contention that previous enmity is the reason for the complaint is not acceptable.

20. As observed earlier, a careful scrutiny of the entire materials placed on record shows that the prosecution has proved the commission of offence by the deceased appellant. There are no reasons to discard or disbelieve the prosecution witness and documents.

21. Even though, the appellant need not prove his defence by direct evidence, he can very well establish his defence from preponderance of probabilities or probable evidence. Whereas in this case, the deceased appellant had made an attempt to do so, but failed to prove his defence in the manner known to law.

22. In view of the foregoing discussion, this Court does not find any merit in the appeal and the same is liable to be dismissed.

23. In the result, the present criminal appeal is dismissed



and the judgment dated 05.07.2011 made in Spl.CNo.1 of 2005 by the Assistant Sessions Judge cum Chief Judicial Magistrate, Ramanathapuram, is here by confirmed. Consequently, the Cr1OP(MD)No. 23704 of 2010 is dismissed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Assistant Sessions Judge cum Chief Judicial Magistrate, Ramanathapuram.
- 2.The Inspector of Police, Vigilance and Corruption, Thoothukudi District.
- 3.The Deputy Superintendent of police, Vigilance and Anti Corruption Wing, Ramanathapuram.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Copy to:

The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.

Cr1.A.(MD)No.215 of 2011
and
Cr1OP(MD)No.23704 of 2016
11.12.2018

dsk

KK/SAR/21.06.2019/6P-7C

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