

**BAIL SLIP**

R.Sivasubramanian @ Adhavan Balaji, S/o.Ramalingampillai, male, aged about 59/2011 was released on bail vide court order dated 23.11.2011 made in MP(MD)No.1 of 2011 in CrI.A.(MD)No.329 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN**CrI.A.(MD) No.329 of 2011**

Mr.R.Sivasubramanian @ Adhavan Balaji

..Appellant/Accused

Vs.

The State of Tamil Nadu,
Rep. by Inspector of Police,
Vigilance and Anticorruption,
Tirunelveli District.

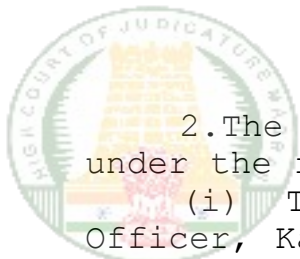
..Respondent/Complainant

PRAYER: Criminal Appeal is filed by the appellants under Section 374 (2) of the Criminal Procedure Code, to set aside the conviction and sentence imposed on the Appellant/Accused by the Learned Chief Judicial Magistrate-cum-Special Judge, Tirunelveli in Special Case No.4/2003, dated 28.10.2011 and allow the appeal and set the appellant at liberty.

For Appellant	: Mr.Veera Kathiravan Senior Counsel for Mr.Anand Abdul Associates
For Respondent	: Mr.M.Chandrasekaran Additional Public Prosecutor.

JUDGMENT

The appellant, R.Sivasubramanian @ Adhavan Balaji, has come forward with this appeal challenging his conviction and sentence passed by the learned Chief Judicial Magistrate-cum-Special Judge, Tirunelveli, dated 28.10.2011 in Special Case No.4 of 2003 convicting the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentencing him to undergo three years rigorous imprisonment and also imposing a fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment and convicting him under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentencing him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.



2.The appellant, who is the sole accused had faced the trial under the following backdrop.

(i) The accused was working as a Village Administrative Officer, Karisalpatti Village. P.W.2 is a resident of Karisalpatti Village. On 27.07.2002, P.W.2 went to the office of the accused and approached him for making entry regarding the death of his mother-in-law in the Birth-Death Register. At that time, the accused demanded a sum of Rs.5,000/- as illegal gratification. P.W.2 stated that he is a poor person and he is not in a position to give such an amount. The accused insisted P.W.2 to give Rs.4,000/- and P.W.2 accepted to give such amount. Thereafter, the accused instructed P.W.2 to come to Veenus Typewriting Institute, Cheranmahadevi on 1.08.2002 at 09.00 a.m., P.W.2 has decided not to give the amount as demanded by the accused and thereafter, went to the Vigilance and Anti-Corruption Office at Tirunelveli on 31.07.2002 at 07.00 p.m.,

(ii)P.W.18, the Inspector of Police, recorded the complaint given by P.W.2 on 31.07.2002 at 7.00 p.m., under Ex.P2 and registered a case in Crime No.6 of 2002 under Section 7 of Prevention of Corruption Act, 1988. Ex.P17 is the First Information Report and thereafter sent the F.I.R., to the concerned Magistrate Court and to the higher officials.

(iii)P.W.18, the Inspector of Police sent intimation to the office of the Prevention of Corruption Office and to the office of the Assistant Divisional Engineer, National Highways, Palayamkottai and the Superintendent of Agricultural Department. On 1.8.2002 at 6.00 a.m., Thiru. Chidambaram, Assistant Engineer, Highways Department, Nanguneri as P.W.3 and Thiru.Pitchaiah, Superintendent of Agricultural Department, came to the Vigilance and Anti-Corruption Office at Tirunelveli. P.W.18 introduced P.W.2 to the P.W.3 and another witness Pitchaiah and explained about the complaint given by P.W.2 and thereafter demonstrated the phenolphthalein test. P.W.18 further instructed P.W.2 to come out and give the signal by cleaning the face through hand kerchief. The said proceedings of the Vigilance and Anti-Corruption Office were recorded under the Mahazar Ex.P.4.

(iv)On the date of occurrence at 8.00 a.m., the raiding party left the Vigilance and Anticorruption Office in the vehicle bearing Reg.No.TN-01 G 0751 along with P.W.2, P.W.3 and other trap witnesses. P.W.18 instructed P.W.2 to go along with P.W.3 to the Typewriting Institute of the accused. The raiding party was waiting nearby Cheranmahadevi Pillaiyarkoil.

(v)At 9.00 a.m., P.W.2 went inside the Venus Typewriting institute of the accused along with P.W.3. The accused asked P.W.2 whether he has brought the amount as asked by him earlier. P.W.2 took out the currency notes Rs.4,000/- from his left hand side pocket and gave the amount to the accused, which was received by the accused by his right hand and put it into his purse. Thereafter, both P.Ws.2 and 3 left the institute and P.W.2 has given the prearranged signal. P.W.18 along with raiding party and P.Ws.2 and



3 rushed inside the institute of the accused and introduced himself and others to the accused. At that time, the accused stood up and opened the purse by his right hand and took the amount with his right hand.

(vi) P.W.18 had taken water from vessel inside the office and prepared the sodium carbonate powder solution and requested the accused to dip his left hand fingers and the solution turned pink in colour. P.W.18 enquired about the bribe amount and the accused took out the said amount from his pocket and handed over the same to P.W.18 and he prepared the mahazar Ex.P.6. P.W.18 also searched the house of the accused and no incriminating materials were recovered.

(vii) P.W.19, the Inspector of Police, Vigilance and Anti-Corruption took up further investigation in this case. He has examined the accused and recorded his statement. After examining the remaining witnesses and after completion of investigation, P.W.19 filed the charge-sheet against the accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. During trial, the prosecution in order to prove its case beyond reasonable doubt, has examined the witnesses as P.W.1 to P.W.19 and marked documents Exs.P.1 to P.20 and six Material Objects were marked. On the side of the accused, one witness was examined and one material object was marked.

4. When the accused was questioned under Section 313 of Cr.P.C., the accused has come forward with a version of total denial. The accused further emphatically denied about the receipt of illegal gratification.

5. The learned counsel appearing for the appellant vehemently contended that the prosecution has miserably failed to prove its case beyond reasonable doubt and the entire prosecution case suffers from serious infirmities.

6. He further submitted that there is contradictions with regard to presence of persons at the time of trap in the Typewriting Institute between witnesses P.W.3 and P.W.18. P.W.2 in his chief-examination deposed that the appellant counted the money and kept in purse and thereafter, kept in the pant pocket. He further deposed that he stayed in the Director of Vigilance and Anti-Corruption Office, Palayamkottai at 31.07.2002 night.

7. He further submitted that receiving a sum of Rs.4,000/- by the appellant/accused is accepted by him. But the said amount has not been received by him as bribe money instead of the said money has been received only for consideration of purchasing of two typewriting machines for the son of P.W.2-complainant and the said amount has been coated with phenolphthalein powder. In that, he has stated that his wife was running the typewriting institute.



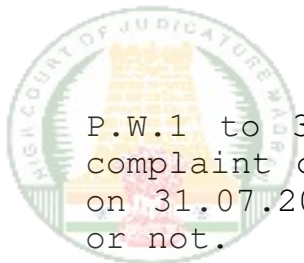
Therefore, he came on 01.08.2000 for purchase of typewriting machine. Without knowing the seriousness behind the act, the appellant received the money and immediately, Vigilance recovered the money from the appellant and conducted the phenolphthalein test. Hence, the complaint is a fabricated one and he was victimised by the act of the defacto complainant, who gave the complaint to the respondent police, as if he received illegal gratification. Therefore, this fact has not been considered by the trial Court.

8.He would further submit that there are material contradictions among the prosecution witnesses. The trial court failed to reject the sanction order accorded by P.W.1 as he has mechanically signed a model sanction order produced to him by the Vigilance and Anticorruption Inspector. P.W.1 has not applied his mind independently and passed the order.

9.The trial Court failed to note that P.W.1 has admitted in his chief examination and cross examination that the sanction order is a model one and whether the statement recorded under section 161 Cr.PC from the accused was produced along with the documents were prepared on the date of draft and his evidence is doubtful and the conviction cannot be sustained on that point. The Revenue Divisional Officer, Cheranmahadevi has stated that the documents annexed by the Inspector of Police, Vigilance and Anti corruption were produced by him. Regarding P.W.2 Chelladurai, he admitted in his chief examination on the first line, that he is living in NKP Nagar, Palayamkottai at the same time, he has stated that he stayed in the Directorate of Vigilance and Anticorruption Office on that night and slept there. The Directorate of Vigilance and Anticorruption is also in the same Palayamkottai Town. Hence, P.W.2's story cannot be believed to support the prosecution case.

10. The learned Magistrate failed to appreciate the case of the defence put before the inspector of police during the cross examination about the sale of two typewriting machines and admitted in his cross examination that the said two type machines were on the table of the accused at the time of trap at the typewriting institute. No opportunity was given to the appellant to offer his explanation. Had the appellant allowed to offer his explanation, he would have given the same but no opportunity was given. It is settled law that the appellant is not required to prove his defence by strict standard of proof as prosecution. The defence can be established by preponderance of probabilities or probable defence. The complaint was given by P.W.2 on 31.07.2002. There was no demand by the accused on the date of trap at the typewriting institute and hence liable to be acquitted. This fact has not been considered by the trial Court.

11.Even P.W.18 trap laying officer has stated that on 01.08.2002 he has sent the summons, whereas the summons have not been produced before the Court. Therefore, from the evidence of



P.W.1 to 3 and 18, there is a doubt as to whether P.W.2 gave a complaint on 31.07.2002 at 7.00 p.m., whether P.W.18 sent a summons on 31.07.2002 or 1.8.2002 or whether P.W.2 are present on 1.8.2002 or not.

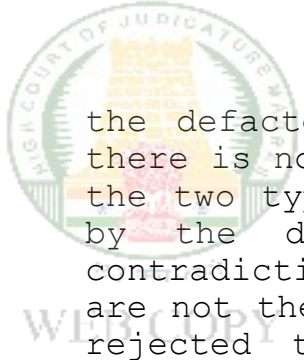
12. The learned Government Advocate (Crl.side) appearing for the respondent would submit that the prosecution has proved its case by adducing clear, cogent and consistent evidence. It is contended that the evidence of P.W.2 is clear in respect of demand made by the accused on the date of trap, which was corroborated by the evidence of P.W.3, the trap witness.

13. The accused was working as Village Administrative Officer, Karisalpatti Village. P.W.2 is a resident of Karisalpatti Village. On 27.07.2002, P.W.2 went to the office of the accused and approached him for making entry of the death of his mother-in-law in the records. At that time, the accused demanded a sum of Rs.5,000/- as illegal gratification. Thereafter, the accused instructed P.W.2 to come to Venus Typewriting Institute, Cheranmahadevi on 1.08.2002 at 09.00 a.m., P.W.2 has decided not to give the amount as demanded by the accused and thereafter, went to the Vigilance and Anti-Corruption Office at Tirunelveli on 31.07.2002 at 07.00 p.m.,

14. P.W.18, the Inspector of Police, recorded the complaint given by P.W.2 on 31.07.2002 at 7.00 p.m., under Ex.P2 and registered a case in Crime No.6 of 2002 under Section 7 of Prevention of Corruption Act, 1988. Ex.P17 is the First Information Report and thereafter sent the F.I.R., to the higher officials. On 1.8.2002 at 6.00 a.m., the independent witnesses came to the Vigilance and Anti-Corruption Office at Tirunelveli. P.W.18 introduced P.W.2 to P.W.3 and another witness Pitchaiah and explained about the complaint given by P.W.2 and thereafter demonstrated the phenolphthalein test. P.W.18 further instructed P.W.2 to come out and give the signal by cleaning the face through hand kerchief. On the date of occurrence at about 8.00 a.m., the raiding party left the Vigilance and Anticorruption Office in the vehicle bearing Reg.No.TN-01 G-0751 along with P.W.2, P.W.3 and other trap witnesses. P.W.18 instructed P.W.2 to go along with P.W.3 to the Typewriting Institute of the accused. The raiding party was waiting nearby Cheranmahadevi Pillaiyarkoil.

15. Thereafter, both P.Ws.2 and 3 left the Type writing Institute and P.W.2 has shown the prearranged signal. P.W.18 along with raiding party and P.Ws.2 and 3 rushed inside the institute of the accused and introduced himself and others to the accused. At that time, the accused stood up and opened the burse by his right hand and took the amount with his right hand.

16. In such circumstances, once recovery is proved, it is for the appellant to rebut the presumption that the money recovered from the appellant is not a bribe and it is only for the purpose for which he has received the money. According to the appellant, though he has received the money for purchasing of typewriting machine for



the defacto complainant's son who was a student at that time and there is no necessity arises for the defacto complainant to purchase the two typewriting machines. Therefore, this fact was not proved by the defence in the manner known to law and also the contradictions and discrepancies between the prosecution witnesses are not the material contradiction. The Special Court has rightly rejected the defence taken by the appellant and came to the conclusion that the prosecution has proved his case beyond reasonable doubt. There is no merit in the appeal.

17.I have carefully considered the rival submissions made by either side and perused the entire evidence available on record and the impugned judgment of conviction.

18.The prosecution mainly placed reliance on the evidence of P.W.2, the complainant in this case, P.W.3 is the shadow witness, who is said to have accompanied P.W.2 at the time of trap and P.W.18, the Inspector, who has conducted the trap.

19. Let me now scan through the entire evidence of P.Ws.2,3 & 18 and find out whether the prosecution has proved its case beyond reasonable doubt against the accused.

20. A reading of the entire records, prosecution witnesses P.W.1 to P.W.19 and also the documents marked under Ex.P1 to Ex.P20, it is seen that the evidence of P.W.2 is clear that the appellant demanded a sum of Rs.4,000/- as illegal gratification and also he has spoken about the demand made by the appellant and also the complaint given to P.W.18 and thereafter, the trap was laid and then the appellant was got red-handed.

21.From the evidence of P.W.3 though he was working as Assistant Divisional Engineer, National Highways, as per the instructions of the Superior, he went to the office of the P.W.18 on 01.08.2002 early morning. One Pitchaiah was working as Superintendent of Agricultural Department also went there on 01.08.2002 to the office of the P.W.18, where the defacto complainant also came and P.W.18 introduced both the independent witnesses to the defacto complainant/PW2. Thereafter he conducted pre-trap demonstration and the phenolphthalein test. After completing the test, observation mahazar was prepared. P.W.3 went along with P.W.2 on 01.08.2002.

22. One of the contention raised by the learned counsel for the appellant that P.W.2 stated that the appellant received the money and after counting the money, kept the money into the money purse and thereafter he kept the same in the pant pocket. P.W.3 in his chief-examination deposed that the appellant kept the money in front pant pocket and in his cross-examination he denied the question that the appellant received the money from P.W.2 and kept the money in the money purse and thereafter in his pant. Which also creates a doubt. The said money purse was recovered, but it was not sent to



the Forensic lap for Phenolphthalein test. Further, he has also raised a contention that he kept the money in the money purse and kept the purse in the pocket. It is not possible that if at all the money kept in the purse and the purse was only kept in the pocket. The cloth would not have got the phenolphthalein powder.

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23. The appellant has admitted that there was a trap on 01.08.2002 and admitted that soon after getting the money from the defacto complainant, the trap laying officer came to spot and recovered the money. Therefore, once he has not denied the trap and also has not denied the receipt of the amount from the defacto complainant on 01.08.2002, now he cannot questioning the pre-trap proceedings and also the contradiction between the witnesses during the trap proceedings, which will not help the defence case. The prosecution has proved its case through prosecution witnesses P.Ws.1 to 4, 14 & 18 and the appellant also admitted that he received the money from the defacto complainant, but he has stated that no amount was received as bribe for issuing certificate. The appellant admitted that the appellant's wife was running a typewriting institute and received the money for selling the old typewriting machine to the defacto complainant. Therefore, it is for the appellant to prove that there is a transaction between the defacto complainant and the wife of the appellant for selling of typewriting machine. It is not the case of the appellant that he was running the typewriting institute. As a public servant, he cannot run the typewriting institute or selling the type machine without permission of the Government. It is his wife who has run the typewriting institute, but his wife has not been examined before the Court, to prove the defence case that the appellant's wife was running a typewriting institute and sold the type machine to the defacto complainant.

24. Though the appellant has taken the defence that his wife is running the typewriting institute but whereas the wife of the appellant was not examined and stated that the defacto complainant approached the appellant's wife for purchasing the type machine. Therefore, non-examination of the appellant's wife is fatal to the case of the defence. Sofaras the rebuttal is concerned, though the defence need not prove by adducing direct evidence and it can be rebutted by preponderance of probabilities. The appellant even in the year 2002 itself has taken a stand that he has received the money for selling type machine. But the appellant has clearly stated that he has not running the typewriting institute, his wife was running the typewriting institute and there is no agreement filed by the appellant or the defacto complainant regarding purchasing of typewriting machine and also no receipts was produced for giving machine. There is no evidence to show that the machine has been handed over to the defacto complainant after receiving the amount. Therefore, in the absence of the same, the defence taken by the appellant regarding purchasing of the type machine and he received the consideration only for selling type machine is not acceptable.



25. This Court finds that the appellant failed to rebut the presumption in the manner known to law. From the prosecution evidence, this Court finds that the prosecution has proved his case beyond reasonable doubt when especially the appellant admitted the receipt of the money on 01.08.2002. Therefore, the initial burden of proof of the prosecution is proved. It is for the appellant to prove his case as taken by him in the year 2002 itself. The appellant has stated that he received the money only for selling the typewriting machine and the said defence has not been established by the appellant in the manner known to law.

26. In such circumstances, there is no reason to interfere with the judgment of the trial Court and there is no merit in the appeal and the appeal deserves to be dismissed. Accordingly, this Criminal Appeal is dismissed confirming the conviction and sentence passed by the Chief Judicial Magistrate-cum-Special Judge, Tirunelveli. No costs. The respondent police is directed to secure the appellant/accused forthwith to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

Am

To

1. The Chief Judicial Magistrate-cum-Special Judge,
Tirunelveli.

2. The Inspector of Police,
Vigilance and Anticorruption,
Tirunelveli District.

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

4. The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 cc to Mr. ANAND ABDUL VINOTH ASSOCIATES, Advocate, SR.No.99010

Cr1.A. (MD) No.329 of 2011
06.12.2018