Bail Slip in Crl.A(MD)No.353 of 2011

The Appellant/Accused namely P.Karunanidhi, S/o.Ponnusamy was directed to be released on bail in and of the Order of this Court dated:12.12.2011 made in MP.No.1/2011 in Crl.A(MD) No.353 of 2011 on the file of this Court.

Bail Slip in Crl.A(MD)No.361 of 2011

The Appellant/Accused namely A.Karunanidhi, S/o.Appavoo was directed to be released on bail in and of the Order of this Court dated:19.12.2011 made in MP.No.1/2011 in Crl.A(MD) No.361 of 2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.A.(MD)Nos.353 and 361 of 2011

1. P. Karunanithi ...Appellant/accused in Crl.A(md)353 of 2011

2.A.Karunanithi ...Appellant/accused in Crl.A(md)361 of 2011

- Vs-

The State Represented by
The Inspector of Police
Vigilance and Anti- Corruption
Trichy
Crime No.8 of 2004 ...Respondent/complainant

Common Prayer: Criminal Appeals filed under Section 374 of Criminal Procedure Code, to set aside the judgment and conviction passed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy in Special Case No.2 of 2011 dated 23.11.2011 and acquit the appellant herein.

For Appellants :Mr.T.Senthil Kumar
(in Crl.A(MD) No. 353 of 2011)
Mr.A.S.Gopalamanikandan
(in Crl.A(MD) No. 361 of 2011)

For Respondent :Mr.K.K.Ramakrishnan
Additional Public Prosecutor
(in both Criminal Appeals)

COMMON JUDGMENT

Both the appeals are arising out of the same judgment, The appellant in Criminal Appeal No.353 of 2011 is the second accused and the appellant in Criminal Appeal No. 361 of 2011 is the first accused in Special Case No.2 of 2011 on the file the Special Court for trial of cases under the Prevention of Corruption Act.

2. The case of the prosecution is that the defacto complainant approached A1 on 09.11.2004 for getting income certificate. The appellant herein demanded Rs.500/- for issuing the certificate. He was not in a position to pay the said amount and he requested A1 to issue certificate without any money, for which, the appellant has stated that he has to pay money and then only he can issue certificate. He again approached the appellant on 27.11.2004 at that time also he demanded money, hence left and approached the respondent police. The respondent police planned trap proceedings. Therefore he arranged for trap on 03.12.2004. So he summoned two independent witnesses and demonstrated about the pre trap proceedings and thereafter he sent the defacto complainant to approach the Village Administrative Officer. He once again demanded money and the defacto complainant handed over the money to the Village Administrative Officer. PW.3 (independent witness) known as shadow witness also followed the defacto complainant and observed what was transpired between the Village Administrative Officer and the defacto complainant. When he handed over the money to A1/Village Administrative Officer, he asked A2 to receive the money and A2 after receiving the money counted the money and then he handed over the certificate to the defacto complainant and received the money and kept in a place where A1 instructed. Thereafter from the office of the Village Administrative Officer, the defacto complainant showed pre arranged signals to the trap laying officer, who after receiving the pre-arranged signals from the defacto complainant and when they approached the defacto complainant he narrated the events happened in the VAO office at the time of accepting money and he confirmed with PW.3/shadow witness and entered into the VAO office and the trap laying officer introduced himself and immediately conducted phenolphthalein test with A2, which resulted positive and thereafter recovered the money in the presence of independent witnesses and prepared the recovery mahazhar and also with the samples of phenolphthalein test, after completing trap proceedings, handed over the case to the Inspector of Police. After completing the investigation respondent filed charge sheet before the concerned court in Special Case No.02 of 2011 and after completing the legal formalities framed charges against the appellants.

3.In order to prove the case of the prosecution, on the side of the prosecution as many as 12 witnesses were examined as PW.1 to PW.12 and 16 documents were marked as Ex.P. 1 to Ex.P16 and 5 material objects were exhibited. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and no material objects were marked.

4.After completion of the prosecution evidence, when the incriminating materials culled out from the prosecution witnesses were put before the appellants / accused, the appellants denied the same as false.

5.After hearing the arguments and also considering the materials placed on record, the learned Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy found the accused guilty and convicted the appellants for the charges, against which the appellants have preferred the present appeals.

6. Since both the appeals are arising out of one and the same judgment both appeals are tried jointly and this common judgment has been pronounced.

7. The learned counsel for the appellants would submit that the appellants have not demanded money and they already prepared to hand over the certificate and after receiving that he went out side and once again he came and gave that cover to get the signature from the RI, therefore a false case has been foisted against them and there was no demand and acceptance and due to the delay in giving the certificate to the defacto complainant he has filed a false case against them. There was no demand and even from the evidence of PW1, PW2 and PW3 and trap laying officer the prosecution has not proved that A1 accepted money and recovery was made from the possession of A1, therefore in the absence of demand, acceptance and recovery, A1 cannot be convicted. The prosecution has not proved the mandatory ingredients of demand acceptance and recovery. Further charges have also not been framed as contemplated under section 212 of Cr.P.C. Charge is not specified, therefore which also vitiates the case of the prosecution. Further, there are many contradictions between the prosecution witnesses. According to the A2, the VAO only called him and asked to hand over the cover and therefore A2 was not aware of the fact that the cover contained tainted money. A2 has received the money and there is no demand and acceptance proved by the prosecution therefore charges are not framed as against A2 as contemplated under Section 212 of Cr.P.C which vitiates the case of the prosecution. The sanction authority has not applied its mind before according sanction. Therefore it also vitiates the case of the prosecution. The trap laying officer has clearly stated that only VAO had demanded and not A2 and also they have stated that VAO has not accepted the money and A2 only received the money. Therefore as against A1 demand, acceptance and recovery have not been proved, against A2, demand was not proved. Therefore under these circumstances the main ingredients of demand, acceptance and recovery are not proved as against both A1 and A2. After receiving tainted money if a person is handling the notes then there is possibility of presence of phenolphthalein powder in his hands, therefore in this case, it is admitted that he has handed over the cover to A2. Therefore when two views are possible the view which is favourable to the accused has to be extended in favour of them. Therefore in this case, the prosecution has failed to prove the case

beyond reasonable doubts. There is no evidence to show that A2 demanded money and there is no evidence to show A1 accepted the money. Therefore this warrants interference and in support of his contention, the learned counsel for the appellants also placed reliance on the decision of the Honourable Supreme Court in *V.Sejappa -vs- State by Police Inspector. Lokayuktha, Chitradurga* reported in *(2017) 3 Supreme Court Cases (Cri)699* and also another judgement in *Sadashiv Mahadeo Yavalurjue and Gajananshripatrao Salokhe -vs- State of Maharasthra* reported in *1990 Supreme Court Cases (Cri.) 104.*

8. Per Contra, the learned Additional Public Prosecutor would submit that the evidence of PW.1 and Trap laying officer would clearly show that A1 demanded and A2 accepted money as instructed by A1. Therefore it proves that he accepted money for himself or other persons on behalf on him. In this case both A1 and A2 demanded and accepted money other than legal remuneration. Therefore Section 7 is attracted. Further they have clearly stated that A2 received the money with the knowledge and under instruction of A1, therefore the charges framed by the trial court is in order. The judgment of the trial court does not warrant any interference.

9. It is the case of the prosecution that both the appellants are working in the same office and the defacto complainant belongs to the same village and in order to obtain certificate he approached A1 for which A1 demanded money. Subsequently when he expressed his inability to mobilize fund, even then he did not accept his request and he demanded further money. Subsequently when he approached on 27.11.2004, A1 did not give the certificate to him. Therefore he approached the respondent police. Subsequently, trap was conducted and the appellant was caught red-handed. Therefore after completing investigation the prosecution filed the charge sheet.

10.After completing trial the special court convicted and sentenced A1 to undergo rigourous imprisonment for two years and to pay a fine of Rs.5000/- indefault to undergo simple imprisonment for three months for the offence under sections 13(1)r/w.13(2) Prevention of Corruption Act; Rigorous imprisonment for three years and fine of Rs.10,000/- in default to undergo simple imprisonment for a period of three months for the offence under Section 7 of the Prevention of Corruption Act. A2 was convicted and sentenced to undergo rigourous imprisonment for one year and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for three months for the offence under sections 13(1)r/w.13(2) Prevention of Corruption Act.

11.A reading of the evidence of PW1, and sanction order shows that prima facie found that appellants are involved in the case and therefore he accorded sanction. A reading of the evidence of PW2/defacto complainant clearly narrated that the defacto complainant and the appellants are residing in the same village.

Therefore he approached the Village Administrative Officer and when he went and enquired on 09.11.2004, A1 demanded money. When he expressed his inability to mobilize money A1 did not reply and therefore he once again approached on 27.11.2014 and on that day he reiterated the demand as already made by him and without getting money he is not ready to issue the certificate. Therefore having no other option he approached the respondent police on 03.12.2004 at about 11.00 am then after having received the complaint, trap laying officer arranged for trap and they completed the formalities by 1.00p.m and they left by 3.00p.m. The defacto complainant along with trap team went near the appellant office by 04.00pm and as per the instructions of the trap team the defacto complainant and PW3 went inside the appellant office and when they approached the appellant and at that time no one was there in the appellants' office and at that time A1 asked why there is long delay in coming to the office, the defacto complainant told that due to inability to mobilize fund he could not come and receive the certificate and he handed over the money to A1 and in turn A1 asked A2 to receive the money and keep in a place of A1 and therefore A2 received the money, after receiving the money A1 instructed him to hand over the cover which contains the certificate of the defacto complainant. After receiving the certificate he showed signals to the trap laying officer and the trap team proceeded to the appellants' office and they have conducted trap, subsequently phenolphthalein test was also conducted.

12. PW.2 stated that A2 informed the defacto complainant that he has to give further money to the RI for getting signature whereas PW3 has stated that VAO has only informed the defacto complainant that he has to meet out further expenses for getting signature from the RI and except these minor contradictions no other major contradictions were found, which is not fatal to the case of the prosecution. From the evidence of PW2, PW3 and the trap laying officer the prosecution is able to establish that accused/appellants demanded and accepted the money. Subsequently, TLO recovered the money. On a reading of the evidence of PW2 it is clearly established that A1 demanded money for issuing certificate, which is other than legal remuneration, where on two earlier occasions to the first incident on 09.11.2004 and second incident on 27.11.2004. Therefore PW1 has clearly narrated the money demanded, when he could not pay the money he approached the respondent police on 03.12.2004 and thereafter arranged for trap. The defacto complainant approached the appellants where the A1 has demanded money A2 also accepted the money for and on behalf of A1. Therefore the evidence of PW.1 it is clearly stated that earlier demand on 09.11.2004 and 27.11.2004 and also on the date of occurrence on 03.12.2004 and further the evidence of PW.3 shadow witness the prosecution is able to establish its case. From the evidence of PW.2 and PW.3 demand and acceptance are proved and also from the evidence of PW.3 and trap laying officer and also phenolphthalein test which also proved the demand, acceptance and recovery.

13.As far as first accused is concerned, demand acceptance and recovery was established beyond reasonable doubts. Asfaras A2 is concerned, the learned counsel for the appellants would submit that there is no demand was proved. In the absence of any specific allegations and averments and also specific charges against him, the findings given by the trial court is liable to be set aside and demand, acceptance and recovery are not proved as against A2.

14. For which the learned Additional Public Prosecutor would submit that even though he has not demanded money directly but he had accepted the money and hence section 7 of the Prevention of Corruption Act is clearly attracted. A careful reading of the evidence of PW.2 has clearly stated that even on earlier occasions on 09.11.2004 and 27.11.2004 the earlier demand made by A1 with the defacto complainant and A2 was also present.

15.This Court is not ready to accept the contention made by the learned counsel for the appellants. This Court finds that the prosecution is able to establish that A1 demanded money and on earlier occasions on two days and even on the occurrence date i.e.,03.12.2004. As far as A2 is concerned from the evidence of PW.2 and PW.3 and also the evidence of trap laying officer, A2 received the money as instructed by A1 and also kept the money in the place as instructed by A1 and later on phenolphthalein test was conducted on A2, which shows positive, therefore prosecution is able to establish that A2 accepted money which is also proved. However, it is not in dispute that A2 was the Assistant in A1 office and at the time of trap, with PW2 and PW3 they entered into the office of A1 and A1 demanded money in the presence and knowledge of A2 and when the defacto complainant handed over money to A1, A1 asked A2 to receive money and A2 with the knowledge and instruction of A1 accepted the money other than legal remuneration and even though he accepted money as instructed by A1 with the full knowledge that A1 is receiving money other than legal remuneration he has received money for himself and for A1 and recovery was made from the physical possession of A2. Non framing of charges under Section 12 of the Prevention of the Corruption Act as against A2 is not fatal to the case of the prosecution. Therefore this Court finds that there is no need to frame separate charge against A2 under Section 12 of the Act and this court finds that A2 has committed the offence under Sections 7 of PC and Section 13(1) r/w.13(2) of Prevention of Corruption act.

16.In view of the discussion held above, this Court does not find any merit in the appeals and the same are liable to be dismissed.

17.In the result, the present criminal appeals are dismissed and the judgment made in Special CC.No.02 of 2011 by the Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy dated 23.11.2011, is hereby confirmed. The respondent is directed to secure the custody of the appellants forthwith to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Special Court for Trial of Cases,
under the Prevention of Corruption Act,
Trichy.

2.The Inspector of Police,
Vigilance and Anti- Corruption,
Trichy.

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

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

+1 CC to Mr.T.Senthil Kumar, Advocate SR.No.98707.
+1 CC to Mr.A.S.Gopalamanikandan, Advocate SR.No.98711.

Crl.A.(MD)Nos.353 and 361 of 2011
05.12.2018

aav

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