



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.(MD) No.37 of 2011

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State represented by
The Inspector of Police,
Vigilance & Anti Corruption,
Thirunelveli Detachment
Crime No.01 of 1997

... Appellant

vs

G.Krishnan

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment passed in Special Case No.1 of 1998 dated 18.11.2010 by the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli and convict the respondent / accused as charged.

For Appellant : K.K.Ramakrishnan, APP

For Respondent: Mr.A.Thiruvadikumar for
Mr.C.Kasirajan

JUDGMENT

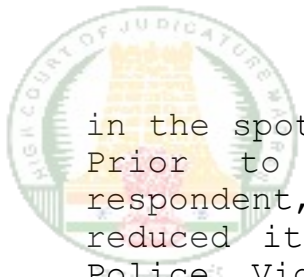
This criminal appeal has been filed to set aside the judgment passed in Special Case No.1 of 1998 dated 18.11.2010 by the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli.

2.Heard the learned Additional Public Prosecutor for the appellant.

3.This appeal arising out of the order acquitting accused, who was tried for the offence under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and Section 477-A of IPC.

4.The brief facts involved in this case are that the respondent G.Krishnan, while working as Firka Surveyor, Munneerpallam, Palayamkottai Taluk, Tirunelveli District, Tr.Paramasivam, (P.W2) submitted a petition on 06.01.1997 requesting to measure the land bearing S.Nos.12/33, 12/34, 12/35, 12/36, 12/37 and 12/40.

5.The said application presented before the Thasildar, was forwarded to the respondent working as Firka Surveyor, Munneerpallam, Palayamkottai Taluk, Tirunelveli District, for measuring the land. Alleging that the respondent delay the process of measuring the land despite directing Tr.Paramasivam to be present



in the spot on 08.02.1997, he did not turn up for measuring further. Prior to that, on 05.03.1997, when Tr.Paramasivam met the respondent, he demanded Rs.500/- for measuring the land later and reduced it to Rs.300/-. Complaint was made to the Inspector of Police, Vigilance & Anti Corruption, Thirunelveli Detachment.

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6. Based on the said complaint, the Trap laying Officer, Tr.A.Joseph, has registered the complaint and arranged two independent witnesses demonstrated the significance of Sodium Corbonate- Phenolphthalein test to them. Entrusted the tainted money to the defacto complainant and has gone to the residence of the accused with the instruction that if the accused demands money, the same has to be given to the accused. Thereafter, on 06.03.1997 between 06.00 and 07.00 p.m., the defacto complainant Tr.Paramasivam, two shadow witnesses Selvakumarasamy and Dhinesh along with Trap laying Officer, Tr.A.Joseph went to the residence of the accused.

7. Paramasivam (P.W2) and Selvakumarasamy (P.W3) went inside the house of the accused. The tainted money was given to the accused on his demand. Thereafter, the Trap laying officer and the witness Dhinesh entered the house of the accused and recovered the tainted money. The hands of the accused was subjected to phenolphthalein test and the result was positive. The accused, who was caught red handed arrested by the police.

8. The prosecution laid final report against the accused for offences under Sections 7 and 13 (1) (d) of the Prevention of Corruption Act. The trial Court has framed charges against the accused for the offence under Section 7 of Prevention of Corruption Act for demanding Rs.500/- as illegal gratification to measure the lands of the defacto complainant later reduced to Rs.300/- and for receiving the same on 08.03.1997. The accused was also charged under Section 477 (A) IPC was framed against him for making false entry in the records on 29.01.1997 and on 30.01.1997 as if he visited the land and caused measurement.

9. To prove the charges, the prosecution has examined 10 witnesses. Through them 10 exhibits and 4 material objects were marked. On behalf of the defence, one witness and four exhibits were marked.

10. The trial Court after considering the evidence, acquitted the accused of all charges. Aggrieved by the said order of acquittal, the present appeal has been filed.

11. The contention of the learned Additional Public Prosecutor is that the prosecution has proved the important factors such as demand, acceptance and recovery of bribe amount. The Court below has erroneously acquitted the accused. Further, it is contended by the learned Additional Public Prosecutor that the diary maintained by the accused shows he has made false entry as if he has visited



the field and measured the property on 29.01.1997 and on 30.01.1997, whereas, he has issued notice for measuring the land only on 08.02.1997 and even on that day he did not turn up for measurement. Therefore, the judgment of the trial Court is liable to be reversed.

12. The learned Additional Public Prosecutor further submitted that the application of the defacto complainant dated 06.01.1997 has been forwarded to the Firka Surveyor on 10.01.1997. Though he received the application on 10.01.1997, he did not proceed to measure the lands despite the defacto complainant paid a sum of Rs.300/- for measuring the land. Thereafter, the accused issued notice to the defacto complainant for measuring the land on 08.02.1997 that too only after making a demand of Rs.500/- on 05.03.1997 and later reduced to Rs.300/-.

13. Since the defacto complainant did not pay bribe, the accused did not visit the field for measuring the lands on 08.03.1997 as scheduled in spite of issuing notice regarding his visit to the field. Thereafter, based on the complaint, the Trap laying Officer, Tr. Joseph along with shadow witnesses went to the house of the accused. The accused received the bribe money from P.W2 and kept the money on the table. The trap team, which entered the house on receiving the signal found and recovered from the possession of the accused with the tainted money. The accused has not explained how the money came in his possession. In spite of proving the ingredients which are necessary for a trap case, the Court below on flimsy reason acquitted the accused.

14. The learned counsel appearing for the respondent / accused would submit that the trial Court has listed out the grounds for disbelieving the case of the prosecution and each ground on its own merit to acquit the accused. Therefore, there is no reason to entertain the well considered judgment of the trial Court.

15. After considering the rival submission made by the learned counsels on either side and the judgment impugned, this Court finds that the view taken by the trial Court is a reasoned one. The entries made in the diary of the accused that he visited the field on 29.01.1997 and on 30.01.1997 are not false entries as alleged by the prosecution. P.W8 and P.W9 admit that the accused visited the land and made measurement in respect of three survey numbers out of six shown. The defacto complainant has made a request to measure the land falling under six survey numbers. On 29.01.1997 and on 30.01.1997 he completed measuring of three survey numbers. For the rest of the land caused notice intimating the measurement will be done on 08.03.1997. Meanwhile, notice from an advocate received in his office that the lands should not be measured since the defacto complainant is not the absolute owner of the property. The said advocate notice is marked as Ex.D2. Since there were some serious objections, he did not visit the field on 08.03.1997 and he has already informed the same to the defacto complainant and the neighbouring land owner. There is no other ulterior motive for not



visiting the field on 08.03.1997.

16.The further explanation of the accused is that he and the defacto complainant (P.W2) are known to each other for a long time and since he did not measure the land officially, P.W2 had grudge over the same and filed the present complaint. Regarding demand of bribe amount, the learned counsel would point out that P.W2 admits that on the earlier occasion, there was no demand of illegal gratification by the accused. As far as the tainted money is concerned, there is contradiction and it is doubtful whether the accused was asked to handle the tainted money and thereafter his fingers were subjected to phenolphthalein test. Since there is a possibility of money being planted on the table of the accused, the trial Court on a cumulative assessment of the evidence of the prosecution has extended the benefit of doubt to the respondent.

17.The material records and the explanations provided by the accused regarding the recovery of tainted money from the table of the accused at his residence, probablise that the accused did not inspect the land on 08.03.1997 due to the objection of the neighbouring land owner. The money recovered from the table and not from the physical possession of the accused. The accused has asked to handle the tainted money before his hands were subjected to Sodium Corbonate Solution Dip. He explains that presence of phenolphthalein test in his hand. Since the accused has probablised his innocence and the trial Court has accepted it.

18.The view, which is reasonable, need not be substituted with an alternate view in appeal. Therefore, this Court does not want to interfere with the judgment of the trial Court.

19.In the result, this criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS-III)

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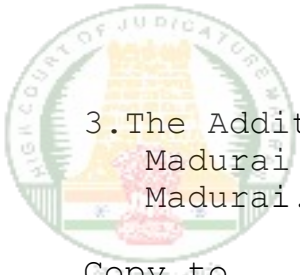
Sub Assistant Registrar(CS-I)

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To

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

2.The Inspector of Police,
Vigilance & Anti Corruption,
Thirunelveli Detachment.



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

Copy to

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

+ 2 CC TO Mr.C.KASIRAJAN , ADVOCATE IN SR No. 92704.

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