

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.10.2019
Pronounced on : 17.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.922 of 2019
and
Crl.M.P.No.13217 of 2019

R.Thavamani ... Petitioner/Accused

Vs.

State
Rep. by the Inspector of Police,
Vigilance & Anti Corruption,
Cuddalore. ... Respondent/Complainant

PRAYER: Criminal Revision Petition filed Under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in Spl. Case No.8 of 2018 and set aside the order dated 01.08.2019 in Crl.M.P.No.249 of 2018 on the file of the Special Court for Trial of cases under Prevention of Corruption Act, Villupuram.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.Aruna Elango

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

J U D G M E N T

The petitioner/accused in Spl.Case No.8 of 2018 for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 had filed a discharge petition in Crl.M.P.No.249 of 2018. The Trial Court by order dated 01.08.2019 dismissed the same, against which the present revision has been filed.

2.The gist of the case is that the petitioner was a Commercial Tax Officer Grade-II in Thirukoillur Circle, Villupuram District. On 10.08.2016, the defacto complainant

Pandiyan met the petitioner at his office for the purpose of enquiring about availing TIN No. and CST No. for starting up a business of selling rice and corn in the name and style of Yasodha Traders. For which the petitioner had demanded an illegal gratification of Rs.8,000/- for filling application through online, processing and issuing TIN No. and CST No. and obtained Rs.2,000/- towards registration of online application and had collected the necessary documents for the said purpose.

3. Thereafter, on 12.08.2016 the defacto complainant received a message in his cell phone that his application was successfully submitted. Later, on 20.08.2016, the petitioner had inspected the shop of the defacto complainant as part of processing to issue TIN No. On 22.08.2016, at about 5.00 p.m. the defacto complainant met the petitioner in his office and enquired about his spot inspection. The petitioner had reiterated his earlier demand of Rs.8,000/- and thereafter the above said demand was reiterated in mobile phone on 25th and 26th of August 2016.

4. The defacto complainant on 31.08.2016, at about 10.50 a.m. accompanied with the official witnesses, met the petitioner in his office, handed over the demanded bribe money of Rs.8,000/-, which was accepted by the petitioner. The petitioner instructed the defacto complainant to place the bribe amount in a half torn brown cover given by the petitioner. The above said brown cover with the cash was later recovered by the respondent and thereafter, on completing all the formalities, seizure mahazar was prepared and thereafter on completion of investigation charge sheet was filed against the petitioner, citing LW1 to LW16 and listing 21 documents.

5. The contention of the learned senior counsel for the petitioner is that the phenolphthalein test in this case proved negative and no recovery was made from the petitioner. The alleged seizure was made from the table of the petitioner and he had not handled any tainted money. In this case, the demand is not proved, no recovery from the petitioner. Hence, no presumption under Section 20 could be drawn.

6. The learned Senior Counsel further submitted that the TIN No. had already assigned to the defacto complainant and the powers of assigning CST is not within his domain. The defacto complainant has projected as though the petitioner had demanded for CST No. But in his 161 statement he had mentioned that if he had not handed over the bribe amount to the petitioner the TIN No. allotted would be cancelled and a new motive is now propelled by the defacto complainant. Thus the defacto

complainant has improving his case to cover up his folly. Further, the defacto complainant had stated that he was carrying a voice recorder, recorded the conversation and handed over the same to the respondent police. No such voice recorder has been produced in this case. LW2 as well as LW12 though confirmed about the handling and handing over the voice recorder, the same has not been produced. Hence adverse inference has to be taken.

7. Further the learned Senior Counsel relied upon the following citations:

1. Madhavro Jiwaji Rao Scindia Vs. Sambhajirao Chandrojirao reported in 1988 (1) SCC 692; and
2. T.M. Shanmughavelu Vs. State reported in 2011 (2) MWN (Cr1) 90.

8. The learned Additional Public Prosecutor submitted that the investigation has been conducted in a fair manner. The demand, acceptance and recovery of the bribe money had been proved by the decoy and two accompanying witnesses. The petitioner's contention that the bribe money had been recovered from the table and he has not handled the tainted money, absence of positive phenolphthalein test, the petitioner could not be prosecuted are not sustainable. The recovery of money is not disputed. LW2, LW3 corroborated about the money kept in the table. He further submitted that the narration of the events are clearly recorded in the recovery mahazar. On instructions of the petitioner, the defacto complainant placed the bribe money in the half torn brown cover which was kept on the side of the table by the petitioner. Further the other portion of half torn cover had been recovered from the scene of occurrence which would go to show that the petitioner had received the tainted money. Further the documents pertaining to the defacto complainant had been seized from the table of the petitioner. Three items have been sent for forensic report. Item No.1 and 2 are the right and left hand wash of the petitioner and item No.3 cover in which the bribe money was kept. As per the report dated 16.12.2016, it is found that the phenolphthalein test was positive on Item No.3. In view of the phenolphthalein positive on the cover recovered from the table and recovery of the other portion of the cover from the scene of occurrence and the accompanying witnesses corroborate the same, the points raised are to be decided only during the trial. Further the Lower Court had passed a well reasoned and detailed order which need not be interfered with.

9. This Court Considered the rival submissions and perused the materials. The presence of phenolphthalein powder in the cover has been proved by the forensic examination. The recovery

of cover with the bribe money has been recorded in the recovery mahazar. It is seen that the portion of the cover was handed over by the petitioner and on his instruction the bribe money has been kept inside the cover and handed over to the petitioner. Naturally the phenolphthalein test would show negative on the hands of the petitioner the petitioner cannot take advantage of the same. Further to it half torn portion of the cover had been recovered from the scene of occurrence. All these facts are recorded in the recovery mahazar.

10.From the statements of the witness namely decoy, accompanying witnesses, entrustment mahazar, recovery mahazar, forensic report and on perusal of the materials, this Court finds that prima facie case has been made out against the petitioner. This Court finds that the contention of the petitioner are to be raised and tested only during trial.

11.In view of the same, this Criminal Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge,
Special Court for P.C. Act Cases,
Villupuram.

2.The Inspector of Police,
Vigilance & Anti Corruption,
Cuddalore.

3.The Public Prosecutor,
High Court, Madras.

Copy to : The Section Officer, Criminal Section,
High Court of Madras, Chennai.

AKM/18.11.19

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