BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI
CRL.A.(MD)No.108 of 2014

The State Represented by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Tiruchirapalli.
(Crime No.4 of 2011) ... Appellant / Complainant

-Vs-

1.M.Dhanaraj
2.G.Nagarajan ... Respondents / Accused 1 & 2

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the judgment of acquittal of the respondents / accused 1 and 2 passed in Special Case No.76 of 2012, dated 31.12.2013 by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli and convict the respondents / accused 1 and 2 for the offence against A1 under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and against A2 under Section 12 of the Prevention of Corruption Act, 1988.

For Appellant : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.
For R1 : Mr.T.Senthil Kumar
For R2 : Mr.G.Karnan,
For Mr.D.Sivaraman

JUDGMENT

This Criminal Appeal preferred by the State is directed against the judgment of acquittal of the respondents herein / accused 1 and 2 passed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.76 of 2012, dated 31.12.2013.

2.For the sake of convenience, the parties are referred to as per the rank in the trial Court.

3.The brief facts, which are leading to this case are as follows:-

(i)The defacto complainant P.W.1 by name Prakash was residing in a rental house belonging to P.W.7 Narayanan at Malli Sahib Street and doing profession of making jewels. On 21.01.2011, when he was at his residence, P.W.5 Ganesan his cousin brother came there and they were talking and at that time the second accused visited to the said house and enquired with P.W.1 as to whether

P.W.1 paid the electricity consumption charges. For which, P.W.1 said to him that he has to pay the same. Subsequently, the second accused enquired with P.W.1 that whether he was doing work by engaging other person and that P.W.1 said to him that he was doing profession of making jewels singly and individually. But the second accused said to him that according to his perception, he was doing the said work by engaging other person and if the higher officials came to know about the same, they would impose fine of Rs.40,000/- to Rs.50,000/-. Again, P.W.1 said that he was doing the said profession individually. Then the second accused instructed P.W.1 to meet the first accused and on 21.01.2011 at about 1.30 p.m., P.W.1 paid the said bill amount and enquired about the first accused with the staff available there and came to know that he was away from the office and again on 28.01.2011 at about 11.00 hrs., P.W.1 went to the said office, met the second accused / Nagarajan. He enquired with P.W.1 as to whether he met the first accused, for which P.W.1 said that he does not know him and that the second accused took him to the first accused and on the way, the second accused told with P.W.1 that he informed with the first accused about P.W.1 and that he said that the fine amount of Rs.40,000/- to Rs.50,000/- has to be imposed and he was informed by the first accused that P.W.1 has to pay a sum of Rs.2,000/- and introduced P.W.1 with the first accused. The first accused asked him as to why he has not come earlier and met him though it was instructed and for which P.W.1 said that he came there and was not found the first accused. Then the first accused enquired with P.W.1 that he was doing his profession by engaging four or five persons and for which P.W.1 said that he alone doing the same and requested the first accused to visit if he thinks fit. Then, the first accused showed the second accused and said that the second accused had already visited there and then demanded a sum of Rs.2,000/- for himself and said he would manage the same and P.W.1 left the place by saying yes.

(ii)Since the defacto complainant is not willing to give bribe amount, on the same day at about 06.00 p.m., he went to the vigilance office and made oral information under Ex.P.1 with P.W.9 Pandithurai, the then Inspector of Police, Vigilance and Anticorruption, Tiruchirapalli, who received the same and registered the First Information Report under Ex.P.16 and issued a copy of the same to P.W.1, after obtaining the signature Ex.P.3 in it.

(iii)Thereafter, P.W.9 arranged for a trap and sent requisitions under Ex.P.17 and Ex.P.18 and also made a request over phone and on his request P.W.2 Raghupathy and the other list of witness Suresh came to the vigilance office on the next day at 09.00 a.m., and they were introduced to P.W.1 and they perused the First Information Report and verified the genuineness of the complaint with P.W.1. Then, P.W.9 demonstrated the sodium carbonate and phenolphthalein test to the said witnesses and to P.W.1 and explained its significance, for which, P.W.1 produced the bribe amount of Rs.2000/-, containing four 500 rupee currency notes M.O.1

series and prepared entrustment mahazar under Ex.P.2 for the above said procedure and the numbers of the currency notes were entered therein. Then, the said amount of Rs.2000/- was handed over to P.W.1 through the Constable. Then P.W.9 instructed P.W.1 to go and meet the accused and instructed P.W.2 shadow witness to accompany with him and to watch over the occurrence and P.W.1 was also instructed to give pre-arranged signal, after acceptance of bribe amount by the accused.

(iv)Thereafter, P.W.9 along with P.W.1, P.W.2, the said list of witness and also his party left the Vigilance Office and stopped their vehicle two furlong prior to the office of the Chief Engineer, Tamil Nadu Electricity Board at about 10.45 a.m., and alighted P.W.1 and P.W.2 with reminding the earlier instructions. P.W.1 along with P.W.2 went inside the office of the Electricity Board and on seeing them, the first accused invited him and enquired about P.W.2 and for which, he said he came along with him and for that he asked P.W.1 as to why he took someone with him. Immediately, P.W.1 said to him that he took P.W.2 for his assistance. Thereafter, the first accused enquired with P.W.1 as to whether he brought the demanded amount of Rs.2,000/- and for which P.W.1 said he brought the same and handed over the tainted money with the first accused, the first accused received the same and after counting he kept the same on the right side table drawer and said he would manage the matter and that nobody would come for raid. Thereafter, P.W.1 and P.W.2 came out of the office, P.W.1 gave pre-arranged signal. On receiving pre-arranged signal, P.W.9 came to there and enquired the happenings inside the office and after ascertaining the same, P.W.9 along with P.W.1, P.W.2 and his raiding party went inside the office, P.W.1 identified the accused to P.W.9. Thereafter, as per instruction of P.W.9, P.W.1 came out of the said office. P.W.9 introduced himself and also introduced P.W.2, the list of witness and also the raiding party with the first accused and the first accused perplexed.

(v)Then P.W.9 instructed to prepare sodium carbonate liquid in two separate glasses. As per the instruction of P.W.9, when the first accused dipped his two hand fingers separately, the same was turned into pink. The two liquids contained the solution were collected under M.O.2 and M.O.3. P.W.9 has recovered M.O.2 and M.O.3 along with M.O.1 tainted money from the first accused and when it was compared with the entrustment mahazar, it was tallied. Thereafter, on enquiry, the first accused produced the receipt No.1316239 (Ex.P.7). The Electricity Service Connection Register maintained at the office of the Assistant Electrical Engineer for Kallar Street page 1 to 99 is marked as Ex.P.20. The Attendance Register is marked as Ex.P.19. Endorsement made in Sl.No.264 at Page 27 in Ex.P.20 is marked as Ex.P.21. Then, P.W.9 arrested the accused and prepared Ex.P.4 mahazar for the above said phenolphthalein test and also the recovery of M.O.1 to M.O.3 and the above said registers and documents. P.W.9 also prepared observation mahazar and after giving advance intimation (Ex.P.23) prepared Ex.P.6 house search list and thereafter, sent the accused to the judicial custody along with the recovered items and documents under Form-95 Ex.P.24.

(vi)Then P.W.10, Ramachandran took up the case for investigation and sent request for chemical examination. He examined the witnesses P.W.2, Raghupathy, P.W.5 Ganesan, P.W.3 Suresh, List of witness Shanmugasundaram, Veerapandian, Lawrance, P.W.7 Narayanan, P.W.9 Pandithurai, the trap laying officer, the list of witness Rosi, P.W.4 Andrews, the list of witness Tamilselvi and recorded their statements. He also received the register pertaining to the electricity service connection name transfer register Ex.P.26, wherein the service connection No.917 has been transferred to P.W.7 Narayanan from one Seethalakshmi. The entries are Ex.P.27. P.W.10 also recovered the Assessment Register Ex.P.28, the file Ex.P.9 containing meter reading tariff report 12/2010 and bill book extract unpaid particulars along with letter dated 15.04.2011. He also recovered the copy of the document No.1037/2006 from the Joint Sub-Register under Ex.P.30 and also the service particulars of the accused under Ex.P.31. P.W.6 Vishalakshi analyzed the liquid contained in M.O.2 and M.O.3 and issued Ex.P.14 chemical analysis report, wherein sodium carbonate and phenolphthalein powder are found. P.W.10 also received the copy of the chemical report.

(vii)P.W.3 Sumathi while working as Assessor was doing the work of calculating electricity consumption charges on 21.01.2011 and received Rs.390/- for the electricity connection No.264 and issued a receipt No.1316239 under Ex.P.7, wherein as per TRM2061A1S297, CC Charges Rs.328/- R.C., Charges Rs.60/- BPSC Rs.2/- in total Rs.390/- are received and issued the receipt for the same. P.W.4 Andrews was working as Assistant Electrical Engineer of Tamil Nadu Electricity Board, Mainguard Gate. The Assessor Nagarajan while submitting his monthly report for the month of December, 2010, reported that the electricity connection No.264 was used on lathe. On 03.01.2011 he endorsed to the Revenue Supervisor Dhanaraj to take follow-up action. On 21.01.2011 one Narayana Asari (P.W.7) submitted a petition stating that one Prakash was residing in electricity connection No.206 009 264 at No.8 Malli Shahib Street and was doing some handicraft work individually and after receipt of the same, he sent the same to Dhanaraj who inspected the said electricity connection on 21.01.2011 and made endorsement that only one person individually doing jewel making work and that it has to be taken as domestic purpose. He sent the report regarding the same under his office letter 361/10, dated 01.02.2011. The file Ex.P.8 contained the said letter of P.W.7 Narayanan is marked as Ex.P.9, the assessment statement 3 numbers are Ex.P.10, the collection details is Ex.P.11 with the covering letter Ex.P.12. P.W.8 Muthamilselvan, the then Superintending Engineer issued the prosecution sanction under Ex.P.15 to prosecute the accused.

(viii)After obtaining the same, P.W.9 completed the investigation and filed final report before the trial Court against the first accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter referred as 'the Act') and against the second accused for the offence under Section 12 of the Act.

4.After receipt of the final report, the trial Court framed charges against the first accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act and against the second accused for the offence under Section 12 of the Act.

5.In order to prove the charges, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and marked 31 documents as Exs.P.1 to P.31 and also material objects M.O.1 to M.O.3. The accused has examined one Kumaravadivel as D.W.1, Subramanian as D.W.2 and marked Exs.D.1 and D.2.

6.The accused persons were questioned under Section 313 Cr.P.C. At that time, the first accused stated that P.W.1 borrowed a sum of Rs.2000/- on 21.01.2011 at the time of visiting his house in presence of his mother. After continuous persistence, he gave a sum of Rs.2,000/- to P.W.1 and that amount was repaid on 29.01.2011 in the presence of shadow witness. Innocently, he received the said amount as loan amount. The second accused stated that he is not present at the time of trap proceeding and he never demanded any money from the defacto complainant. Apart from the above, the accused have examined D.W.1 and D.W.2 and marked two documents as Exs.D.1 and D.2.

7.On consideration of both oral and documentary evidence, the trial Court has rejected the case of the prosecution and accepted the case of the defence and thereby, acquitted the accused persons for the offences as stated supra.

8.Aggrieved against the same, the State has preferred this Criminal Appeal.

9.Heard both sides and perused the materials available on record carefully.

10.The learned Additional Public Prosecutor appearing for the State would submit that normally, this Court would not entertain the appeal against acquittal, unless the order of the trial Court is perverse and not within the legal parameters. In the present case, the crucial witness is P.W.1, 2 and 4. P.W.1 defacto complainant in his complaint clearly stated that on 21.01.2011, the second accused instructed P.W.1 to meet the first accused for avoiding the penalty amount of Rs.40,000/- to Rs.50,000/- for engaging an employee in his profession's place, where he gets only domestic connection. Admittedly, P.W.1 is the tenant of P.W.7 and he gave domestic connection, in which he is doing traditional job. Thereafter, at the instigation of the second accused, he met the first accused on 28.01.2011. At that time, the first accused demanded a sum of

Rs.2,000/- as illegal gratification to avoid penalty proceedings for converting the connection into commercial tariff. Since P.W.1 is not willing to give the bribe amount, he made a complaint before DVAC on the same day. Accordingly, the case was registered and the trap proceeding was conducted. At the time of receipt of the bribe amount, P.W.2 is accompanied with P.W.1 and the evidence of P.W.1 and P.W.2 corroborated each other and both the evidence appears to be nature. The prosecution examined P.W.7 only for the purpose of proving that P.W.1 is the tenant under P.W.7. However, the trial Court believing the defence witnesses and that the bribe amount is loan amount, which is parted by the accused in favour of the defacto complainant, acquitted the accused, which is unsustainable one and it is clearly misreading of the evidence. Accordingly, he prayed for conviction.

11.Per contra, the learned counsel appearing for the first accused would submit that when P.W.1 met the second accused on 21.01.2011, there is no demand and he was directed to meet the first accused to avoid the penalty proceedings. However, P.W.1 on the same day, after met the second accused informed his landlord P.W.7. After receipt of the information, P.W.7 immediately made a written representation to P.W.4 the then Assistant Electrical Engineer on the same day and P.W.4 ordered for inspection. Accordingly, the first accused inspected the premises and gave a favorable report on the same day and the report is marked as Ex.P.9. The prosecution themselves marked favorable documents and the said documents clearly proved that the complaint is made by P.W.1 due to ulterior motive. However, on the same day, P.W.1 and his mother requested the first accused to give a sum of Rs.2,000/- to meet out financial crisis out of goldsmith job. Therefore, the first accused paid a sum of Rs.2,000/- in favour of the defacto complainant. Thereafter, the first accused demanded the said amount. However, the said amount was not repaid. Thereafter, P.W.1 made a false complaint on 28.01.2011 and based on the said complaint, trap proceeding was conducted and the loan amount was recovered from the accused, which is unsustainable one and the same is abuse of process of law.

12.He would further submit that in fact due to non-payment of the electricity bill, P.W.1's connection was disconnected. In fact, that amount also paid on 21.01.2011 and based on the first accused's inspection report, connection was restored. The evidence of P.W.4 Assistant Electrical Engineer is clearly corroborated by P.W.7. After considering the materials on record, the trial Court acquitted the accused and the judgment of the trial Court is not perverse and the same is within the legal parameters.

13.In respect of his contentions, he relied upon the decision reported in ***1977 SCC (Cri) 516 (Hari Dev Sharma Vs. State (Delhi Administration)***. The relevant portion of the said judgment reads as follows:-

"3.....But the main difficulty we feel in accepting the prosecution case arises out of the fact that the High

Court disbelieved the part of it which, according to the prosecution, was the genesis of the case. Having disbelieved the story that the appellant had asked for a bribe of Rs.100 of which Rs.20 was paid in advance, we do not think the High Court could reasonably proceed on what was left of the prosecution case to affirm the order of the conviction passed by the trial Court. The prosecution case was one integrated story which the trial Court had accepted. If the High Court did not find it possible to accept a vital part of the story, it is difficult to see how the other part, which did not stand by itself, could be accepted. It was not the prosecution case that Rs.70 which was recovered from the appellant was the amount that the appellant had asked for from the complainant. This was a new case made by the High Court. Undoubtedly there are circumstances in this case which are highly suspicious against the appellant, but the High Court having disbelieved an essential part of the prosecution case on which the other part was dependant, we do not consider it safe to sustain the conviction of the appellant. Accordingly, we allow the appeal and set aside the order of conviction and sentences passed against the appellant."

14.The learned counsel appearing for the second respondent would submit that the second accused met P.W.1 on 21.01.2011. The prosecution did not make allegation against the second accused that he demanded the bribe amount on 21.01.2011 only the allegation against the second accused is that when he met P.W.1 on 28.01.2011, he demanded illegal gratification. Accordingly, the accused was charged under Section 12 of the Act. The necessary ingredients required under Section 12 of the Act was not established before the trial Court, by which there must be a strong material evidence and no primary evidence was produced before this Court and the second accused was not present at the time of trap proceeding and recovery conducted by the trap laying officer. Considering all those material evidence, the trial Court acquitted the accused, which is perfectly in order and the same need not be interfered with.

15.Upon careful re-assessment of the evidence, judgment of the trial Court, other materials and submissions of the learned counsel on both sides, the following points arise for consideration in this appeal:

(i)whether the order of acquittal passed by the trial Court warrants any interference by this Court?;

(ii)whether the prosecution has established the necessary ingredients required under Sections 7 and 13(2) r/w 13(1)(d) of the Act against the first accused and under Section 12 of the Act against the second accused?.

16.In the present case, P.W.1 is the tenant under P.W.7 and he is running his traditional goldsmith job in his house, in which he got domestic connection. On 21.01.2011 the second accused visited the house premises of P.W.1 and on seeing P.W.5 he enquired P.W.1 whether he has employed in his job, in turn P.W.1 replied that he is the relative and he visited the house due to relationship. Further, the second accused warned P.W.1 that if he is doing his business by engaging any person, penalty of Rs.40,000/- to Rs.50,000/- would be imposed and directed P.W.1 to meet his superior officer / the first accused for solving the issue. However, on the same day, P.W.1 informed the same to P.W.7. P.W.7 immediately made a complaint to P.W.4 Assistant Electrical Engineer. After receipt of the said complaint from P.W.7 landlord, P.W.4 Assistant Electrical Engineer, ordered for inspection. Therefore, the first accused visited the house premises of P.W.1, carried inspection and gave a favorable report, thereafter, connection was restored in favour of P.W.1.

17.The contention of the learned Additional Public Prosecutor is that the complaint dated 28.01.2011 is completely different from the complaint annexed by P.W.7 landlord. P.W.7 is owner of the property and on apprehension he made a complaint before P.W.4 and on his complaint, the first accused conducted inspection and the same was closed. Innocently, P.W.1 again approached the first accused on 28.01.2011 and he demanded a sum of Rs.2000/- and at the time of demand, no person is available. Hence, in the present case, demand and acceptance is well established. However, the said argument cannot be accepted on the ground that P.W.1 is residing in the ground portion and P.W.7 is residing in the first floor and it is not the case of P.W.1 that no one is available in his house. The fact remains that P.W.1 and his mother are residing in ground floor portion. At that time the first accused visited the premises for conducting inspection, whether P.W.1 is doing his traditional business by engaging any other person or not. That being so, the case of P.W.1 that he did not know the inspection of the first accused in the house premises is not acceptable one. P.W.1 also knows that his connection was disconnected for non-payment of the bill amount and the connection was restored on 21.01.2011, after inspection of the first accused and again he met the accused 1 and 2 on 28.01.2011 for the very same reason is unsustainable one. Further D.W.1 and D.W.2 were examined in order to prove the quarrel with regard to the payment of the borrowal amount in their presence. The law is well settled that the order of acquittal cannot be interfered with in machanical manner, unless there is any perversity or not within the legal parameters.

18.Mere recovery of the currency notes will not constitute an offence, unless the demand is proved. In the present case, though the amount was recovered from the first accused, however, no amount was recovered from the second accused and there is justifiable reason that the recovered amount is part of loan amount and the same was established through the evidence of D.W.1 and D.W.2.

19.Though the allegation made against the first accused is that in order to avoid penalty proceedings, he obtained illegal gratification from P.W.1, however, the fact remains that he inspected the property on 21.01.2011 and gave a report and the same was closed on the same day itself. Hence, he exercised the official function on 21.01.2011 itself in favour of P.W.1. It shows that no motive for receiving the gratification.

20.In view of the above discussions and the decision as stated supra, the order of acquittal cannot be interfered with. Hence, the order of acquittal dated 31.12.2013, passed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No. 76 of 2012 is confirmed.

21Accordingly, this Criminal Appeal is dismissed to the extent as indicated above.

sd/
Assistant Registrar(crl. side)

/True Copy/

Sub Assistant Registrar

To

1. The Special Judge,
   Special Court for Trial of Cases
   under Prevention of Corruption Act,
   Vigilance and Anticorruption Court,
   Trichirapalli.

2. The Inspector of Police,
   Vigilance and Anti Corruption Wing,
   Tiruchirapalli.

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

Copy to:
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Criminal Section, (Records)
Madurai Bench of Madras High court, Madurai

+1 CC to Mr.T.SENTHIL KUMAR, Advocate (SR-59216[F] dated 05/04/2019)
+1 CC to Mr.D.SIVARAMAN, Advocate (SR-59715[F] dated 08/04/2019)

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