BAIL SLIP

S.Anna malai, S/o. Saminathan Aged about 63 years sole Accused is released on bail vide court order dated 10.01.2014 in MP(MD).1 of 2014 in CRL A(MD)No.17 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.A.(MD).No.17 of 2014

S.Annamalai ...Appellant

Vs.

State rep. By
The Inspector of Police,
Vigilance and Anti Corruption,
Thanjavur.
(Crime No.3 of 2000) ...Respondent

Prayer:- This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records in Special Case No.1 of 2012 on the file of the Special Court for Trial of case under Prevention of Corruption Act, Trichirappalli, set aside the conviction and sentence imposed on the appellant by the judgment dated 30.12.2013, and acquit the appellant.

For Appellant : Mr.S.Venkatesan
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

JUDGMENT

This appeal is directed against the judgment of the learned Special Judge for Trial of Prevention of Corruption Act Cases, Trichirappalli in Special Case No.1 of 2012, dated 30.12.2013.

2.For the sake of convenience, the parties are referred to as per the rank mentioned in the trial Court. The gist of the charges framed against the appellant/Accused and findings/sentence of the trial Court are as noted below:

Name of Accused	*Charges*	*Finding*	*Sentence*
S.Annamalai	Secs.7 and 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988.	Found guilty under Secs.7 and 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 7 of the Act. To undergo RI for three years and to pay a fine of Rs.5,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for three months, for the offence under Section 13(2) read with 13(1) (d). The sentences will run concurrently.

3.Brief facts leading to this appeal are as follows:

(i).P.W.2-Arokiamohanraj was a resident of Thanjavur and he was having an Auto workshop in the name and style of 'Mohan Auto Garage'. P.W.7-P.K.John was running a Computer centre in the name and style of 'Data Base Solutions' and he was doing assembling and selling of Computers. P.W.2 used to purchase old Computers from P.W.7 and the same was sold in the open market with profit amount. P.W.2 purchased an used Computer from P.W.7 on 08.01.2000 for a sum of Rs.10,000/- for his house owner P.W.5-Vijayaraghavan's son viz., Sugumar, who was studying MCA during the relevant point of time. Accordingly, P.W.5 paid a sum of Rs.10,000/- to P.W.7 and a voucher in Serial No.1077, dated 08.01.2000, which is marked as Ex.P17. The said Computer was delivered in favour of P.W.5's son. However, after two days, it was found that the Computer was not properly working and hence, the same was handed over to P.W.7 through P.W.2. Thereafter, within six days, P.W.7 changed the hard disc and again handed over the same to P.W.5. Like that way, P.W.2 purchased another one old Computer to the tune of Rs.20,000/- for P.W.5. Accordingly, P.W.5 paid a sum of Rs.10,000/- and Rs.5,000/- respectively, totally a sum of Rs.15,000/- and the remaining amount is Rs.5,000/-. Thereafter, after some time, P.W.7 called the defacto complainant and told that the said Computer is worth about Rs.30,000/- and that he is ready to return the money already paid and requested P.W.2 to return the said Computer, in which, there was a dispute in between P.W.7 and P.W.2, which lead P.W.7 to file a complaint before the Inspector of Police Rajamanickam, Thanjavur South Police Station. Thereafter, the said Rajamanickam deputed the accused officer to bring P.W.2 to the Police station. Accordingly, P.W.2-defacto complainant accompanied with the accused went to the police station. The Inspector of Police forced the defacto complainant to accept the compromise, as if, within 30 days P.W.7 will repay the entire amount and accordingly, directed P.W.2 to return the two Computers. Thereafter, since the amount was not paid, P.W.2 has not returned the Computers. Therefore, P.W.7 again given a complaint, in which, second compromise arrived and accordingly, P.W.7 handed over a Punjab National Bank cheque bearing No.276135 for a sum of Rs.10,000/-. Thereafter, P.W.2-defacto complainant handed over the computers to P.W.7. On 16.05.2000, the accused went to the defacto complainant's workshop and threatened the defacto complainant not to present the said cheque and he also threatened that if he present the cheque, another case will be registered against him. Further, the accused officer interacted with the defacto complainant that for the entire transaction, he was an instrumental and that the defacto complainant should pay a sum of Rs.1,000/-, for which, the defacto complainant replied that he will consider for his request. Thereafter, the accused officer repeatedly make demand for the said amount through phone call, so that, on 21.05.2000 he went to the defacto complainant's workshop and again reiterated the bribe amount and to pay a sum of Rs.500/- in one installment and the remaining Rs.500/- in another installment. However, the defacto complainant has not interested in paying the bribe amount to the accused officer and had decided to file a complaint before P.W.14-Inspector of Police, District Vigilance and Anti Corruption.

(ii).The Inspector of Police, received the complaint under Ex.P5 on 22.05.2000 at about 16 hours and thereafter, he registered First Information Report in Crime No.3 of 2000 under Ex.P28. After registering the FIR, P.W.14-Trap Laying Officer deputed two official witnesses viz., P.W.3-shadow witness and P.W.4-Dawood Alikhan. Thereafter, as per the instructions of P.W.14, P.W.2 produced Rs.500/- consisting of five 100 rupees notes-M.O.4 series and the Head Constable demonstrated the phenolphthalein test by smearing the phenolphthalein powder on the said currency notes and after that, the said money was handed over to P.W.2 and P.W.3 was instructed to accompany with P.W.2 and watch over the occurrence. Thereafter, P.Ws.2 and 3 went to the Police station, but the accused officer was not there. Hence, they were instructed by P.W.14 to go to the Vigilance office and thereafter, at about 20.30 hours on 22.05.2000, they went to Thanjavur South police station and at about 20.35 hours, P.W.2 informed with P.W.14 that the accused officer received the bribe amount through his right hand and put it in his left side shirt pocket. Thereafter, P.W.14 recovered the tainted money and compared the same with the entrustment mahazar by the witness Dawood Alikhan, which is found tallied. P.W.14 prepared a mahazar for the above said proceedings under Ex.P.7 and a rough sketch Ex.P.29 and brought the accused along with M.Os. to the Vigilance office. On 23.05.2000, P.W.14 sent the accused officer for judicial custody and handed over the case records to the Deputy Superintendent of Police for further investigation.

(iii).P.W.15, the then Additional Superintendent of Police, Vigilance and Anti-Corruption took up further investigation in this case. He examined other witnesses and obtained sanction orders to prosecute the case as against the accused and after completion of investigation, he laid charge sheet as against the accused for the offence stated above.

4.To substantiate the charges against the accused in trial, on the side of the prosecution, P.Ws.1 to 15 were examined and Exs.P.1 to 35 were marked and M.Os.1 to 5 were produced. When the accused was questioned about the incriminating circumstances and evidence, he replied that in order to escape from the computer business transaction, he made a false complaint before the respondent police and pleaded innocence. In order to disprove the case of prosecution, no witness was examined and no document was marked.

5.Upon consideration of the oral and documentary evidence, the learned Judge found guilty of the accused and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.3,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 7 of the Prevention of Corruption Act, 1988 and to undergo RI for three years and to pay a fine of Rs.5,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for three months for the offence under Section 13(2) read with 13

(1) (d) of the Prevention of Corruption Act, 1988. Aggrieved over the above said conviction, the appellant has preferred the present appeal.

6.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

7.Assailing the findings of the trial Court, the learned counsel for the appellant/accused would submit that the trial Court convicted the accused on wrong premises, in fact there is no corroboration in between the evidence of P.Ws.2 and 3. As per the prosecution, the alleged demand is on 16.05.2000, however, the P.W.2-defacto complainant made a complaint only on 22.05.2000. According to the prosecution, the entrusted mahazar was prepared at 16.15 hours, however, the same was sent to the Judicial Magistrate only at 2.00 a.m., on 23.05.2000, after the trap proceedings. Hence, the entrusted mahazar and the trap mahazar were prepared only after the trap proceedings. Therefore, the delay in filing the complaint itself vitiated the entire prosecution. Further, the appellant is not a competent person to receive the complaint or solve the issue in between the defacto complainant and John and when the person is not a competent person to decide the issue in between P.Ws.7 and 2 and that the said alleged bribe amount was only the excess amount received by the appellant from his brother's son for his two wheeler repair work, in which, he was implicated the above said case. The trial Court without considering the above said issue convicted the accused, which is unsustainable one and hence, he prayed for allowing of the appeal and acquittal of the appellant.

8.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the accused officer is a member of investigation team on the complaint made by P.W.7, for which, P.W.2 accompanied with the accused to the police station. The accused officer received a letter of compromise from P.W.7 complainant therein and P.W.2, in which he made endorsement and put his signature and the signature is marked as Ex.P22. The said letter itself clearly proved the involvement of the accused in the complaint of P.W.7. Though Ex.P3 is dated 10.04.2000, as per the compromise, the cheque was handed over to P.W.2-defacto complainant and in order to prevent the presentation of the cheque by P.W.2, the accused meet P.W.2 in his two wheeler shop on 16.05.2000 and threatened him not to present the cheque on the particular date and he will collect the money and handed over to him, if he present the cheque, another case will be filed against him and thereafter the appellant interacted with P.W.2 that the entire transactions was amicably settled by him and hence, he demanded a sum of Rs.1,000/- from the defacto complainant as a reward of the earlier compromise. Thereafter, on 21.05.2000 and 22.05.2000, the appellant continuously demanded the said money from the defacto complainant. Therefore, he lodged a prosecution, in which, the Trap Laying

Officer completed the pre-trap proceedings and successfully conducted phenopthalin test and the same was handed over to P.W.14 in the Police Station and was endorsed by P.Ws.4, 5, 6 and 10. P.W.4 is a Sub Inspector of Police and P.W.6 is Head Constables and P.W.10 is a Sub Inspector of Police attached with Thanjavur South Police Station. The evidence of P.W.2-defacto complainant and P.W.3-shadow witness are clearly corroborated with each other. Hence, in the present case, the demand and acceptance were clearly established by the prosecution. Thus, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

9.Upon careful re-assessment of the evidence and the judgment of the Trial Court and other materials on record and submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:

(i). Whether the trial Court was right in finding the appellant guilty for the offence under Sections 7 and 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988?

(ii). Whether the conviction and sentence of the Trial Court warrant any interference?

(iii). Whether the defence version that amount received by the accused is an excess amount paid by his relative for his two wheeler repair or not?

10.On perusal of the evidence of P.W.1-Superintendent of Police, it is seen that at the relevant point of time, he sanctioned the prosecution against the accused. His sanction of the prosecution is marked as Ex.P1. However, the learned counsel not attacked the sanction of the prosecution. P.W.2 is the defacto complainant. P.W.3 is a shadow witness. P.W.4 and P.W.10 are the Sub Inspector of Police attached with Thanjavur South Police Station, wherein the accused was working as Head Constable and P.W.6-Head Constable worked along with the accused officer. The prosecution examined their witnesses for the purpose of trap proceedings. P.W.5-Vijayaraghavan purchased the Computer from P.W.7 through P.W.2 for his son and he was examined for the purpose of proving the existing dispute in between P.W.7 and P.W.2. The prosecution has also examined P.W.7 in order to prove the earlier complaint lodged by him against P.W.2-defacto complainant, in which, the Inspector of Police and the accused conducted a preliminary investigation and in his evidence clearly deposed that the appellant is participated in the preliminary enquiry and compromise was taken place in between them and that the appellant stood as a witness for payment of cash for a sum of Rs.15,000/- in favour of the defacto complainant and Rs.10,000/- cheque in favour of the defacto complainant. The said compromise is marked as Ex.P3 in which the accused officer made his signature and the same is marked as Ex.P22. Further, P.W.7's FIR is marked as Ex.P23.

11. In view of the above, it is made clear that there was an existing dispute in between P.W.7 and P.W.2, in which one Rajamanickam, the then Inspector of Police and the appellant/accused conducted a preliminary investigation and entered Ex.P3-compromise in between P.Ws.2 and 7. Hence, this Court drawn the inference of the participation of the appellant in the above said complaint filed by P.W.7 against P.W.2.

12. The crucial witnesses for deciding the case are P.Ws.2, 3 and 14. P.W.2 in his evidence indicates that as per the instruction of P.W.14, he along with P.W.3 went to the Police station, but the accused officer was not there. Hence, they were instructed by P.W.14 to go to the Vigilance office and thereafter, at about 20.30 hours on 22.05.2000, they went to Thanjavur South police station and at about 20.35 hours, P.W.2 informed with P.W.14 that the accused officer received the bribe amount through his right hand and put it in his left side shirt pocket. P.W.3 in his evidence indicates that he went along with P.W.2 on 22.05.2000 to Police station at 7.15 p.m. and they found the accused officer not available and the same was informed to P.W.14. Thereafter, P.W.14 requested P.Ws.2 and 3 to come back to DVAC office and thereafter they again went to Police Station at 8.30 p.m. and found the accused officer sitting in his chair and on seeing P.W.2 (defacto complainant), the accused officer interacted with the defacto complainant as if he repeatedly tried to contact him over phone, however, he was not able to secure him and demanded the said bribe money. Thereafter, the said money was handed over to the accused officer and he received the same in his right hand and put it in his shirt pocket. Therefore, the evidence of P.Ws.2 and 3 clearly corroborated with each other and there is no contradiction in between them and the evidence of P.Ws.2 and 3 is quite natural and this Court did not found any discrepancy in their evidence. The evidence of P.W.14-Trap Laying Officer also corroborated the trap proceedings and his trap proceedings also confirmed by P.Ws.4, 6 and 10.

13. Further, the first limb of the argument of the learned counsel appearing for the appellant that the alleged initial payment is on 16.05.2000, however, the complaint is lodged on 22.05.2000. On perusal of the evidence of P.W.2 makes it clear that the initial demand is on 16.05.2000 and thereafter, the second demand is 21.05.2000. At the time of first demand, he simply demand the money, however, P.W.2 said that he will consider the same. Thereafter, he made a further demand on 21.05.2000 and forced the defacto complainant to pay the same in two installments as Rs.500/-. Again the appellant reiterated on 22.05.2000 morning through phone call and on the same day evening, he reiterated the further demand. Thereafter, on 22.05.2000, the defacto complainant lodged a complaint before P.W.14. Hence, this Court did not find any delay in filing the complaint. Accordingly, the first limb of the arguments of the learned counsel for the appellant/accused is liable to be rejected and accordingly, rejected.

14. The second limb of the argument of the learned counsel for the appellant/accused is that the appellant did not receive any bribe amount from the defacto complainant and that the alleged bribe amount was only the excess amount received by the appellant from his brother's son for his two wheeler repair work. However, the said contention cannot be accepted for the reason that the accused officer filed a written statement under 313 proceedings, in which, he has stated that P.W.2 came to the Police station and in order to escape from the transaction, P.W.2 handed over the bribe amount of Rs.500/- (Five hundred rupees notes) and requested the accused to hand over the said amount to Rajendran-Sub Inspector of Police. He would further state that he innocently received the said amount. However, the accused officer in his cross examination has stated that the alleged bribe amount was only the excess amount received by the appellant from his brother's son for his two wheeler repair work. Therefore, I am of the view that since there is serious contradiction between the 313 statement of the appellant and the cross examination, the contention of the learned counsel for the appellant/accused that the appellant has not received any bribe amount, is liable to be rejected.

15.The last limb of the arguments of the learned counsel for the appellant/accused is that there is a delay in sending the entrusted mahazar. In fact, the entrusted mahazar was prepared at 16.15 hours on 22.05.2000, however, it reached the Court at 2.00 a.m. on 23.05.2000. Therefore, there is some procedural violation in preparing the mahazar.

16.I have perused the entrusted mahazar-Ex.P6 and Recovery Mahazar-Ex.P7. The entrusted mahazar was prepared at 16.15 hours on 22.05.2000 and it reached the Court at about 2.00 a.m., on 23.05.2000. However, the recovery mahazar is prepared at 8.40 p.m. 22.05.2000 and the same was reached to Court at 09.45 a.m. on 23.05.2000. Hence, I do not find any irregularity or procedural violation in preparation of entrusted mahazar and recovery mahazar.

17.On perusal of the above evidence, it is found that the prosecution has placed materials proving that the appellant had demanded and accepted the bribe money from the defacto complainant for his part on the earlier compromise entered in between P.Ws.2 and 7. Therefore, the trial Court has rightly held that the prosecution has established the case beyond reasonable doubt as against the accused and the trial Court has also rightly found the accused guilty and convicted him. Having gone through the Judgments and careful assessment of the findings and other relevant materials, this Court finds that it is very difficult to come to a different conclusion and that the finding of the trial Court is ought to be maintained.

18.However, the learned counsel for the appellant/accused would submit that the appellant is now aged about 73 years and he is suffering from old age ailments and hence, he requested the

Court to show some leniency and prayed for reduction of sentence.

19.Considering the passage of time and the age of the appellant/accused, the sentence imposed on the appellant under Section 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988, is reduced to minimum sentence of one year from three years. In other aspects, the Judgment of the trial Court is confirmed. The sentences are ordered to run concurrently.

20. In the result, the Criminal Appeal is partly allowed subject to the modification of the sentence as stated above. It is reported that the appellant is on bail. The bail bond executed by the appellant shall stand cancelled and the trial Court is directed to take steps to secure the appellant/accused and send him to jail to undergo the remaining period of sentence as per this Judgment.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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TO

1. THE SPECIAL JUDGE,
SPECIAL COURT FOR TRIAL OF CASE
UNDER PREVENTION OF CORRUPTION ACT,
TIRUCHIRAPPALI.

2. THE DISTRICT COLLECTOR,
TIRUCHIRAPPALI.

3. THE DIRECTOR GENERAL OF POLICE,
MYLAPORE, CHENNAI.

4. THE SUPERINTENDENT CENTRAL PRISON,
TIRUCHIRAPPALI.

5. THE THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
THANJAVUR.

6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT
MADURAI.

COPY TO
THE RECORD KEEPER,
VERNACULAR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

Crl.A.(MD).No.17 of 2014
21.03.2019

TR (25.04.2019) 10P 9C