Bail Slip

P.Tamilselvan, S/o.Ponnaiyan, male aged about 57 years (Sole Accused) was released on bail vide Court order dated 10.06.2014 made in MP(MD).No.1 of 2014 in Crl A(MD)No.172 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.A.(MD).No.172 of 2014

P.Tamilselvan ...Appellant/Sole Accused

Vs.

The State, represented By
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thanjavur, Thanjavur District.
(Crime No.4 of 2004) ...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records in Special Case No.152 of 2011, on the file of the learned Special Judge, Special Court for Trial of Cases Under Prevention of Corruption Act, Trichirappalli, Trichirappalli District and set aside the Judgment, dated 20.05.2014 and acquit the accused/appellant.

For Appellant : Mr.Veera Kathiravan,
Senior Counsel
for Mr.A.Thiruvadikumar

For Respondent : Mr.K.K.Ramakrishnan
Addl. Public Prosecutor

JUDGMENT

This appeal is directed against the judgment of the learned Special Court for Trial of Cases Under Prevention of Corruption Act, Trichirappalli, Trichirappalli District in Special Case No.152 of 2011, dated 20.05.2014.

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 the findings/sentence of the trial Court are as noted below:

Name of Accused	*Charges*	*Finding*	*Sentence*
P.Tamilselvan	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.2,500/- 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 two years and to pay a fine of Rs.2,500/- 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-Muruganandham purchased a property from one Malarkodi. After the purchase, he dig a bore-Well in the property. Thereafter, for securing electricity service connection, he needs a certificate, so that he met the appellant/accused, who was working as Village Administrative Officer, Semmangudi Village, Thirunaraiyur, Kumbakonam Taluk on 24.09.2003 and handed over the sale deed to the accused officer for the purpose of securing the certificate of electricity service connection and he was informed by the accused officer that the document was executed newly and hence instead of issuing separate patta, a joint patta could be issued and after that, the same could be changed as separate patta. Thereafter, the accused officer got signature from P.W.2 and also received Rs.200/- for payment of fee through challan. On 12.10.2003, P.W.2 met the accused officer at his office and the accused officer issued certificate along with sketch, chitta, kist receipt and copy of Adangal. P.W.2 signed in the application under Ex.P5 and the same was filled and handed over to him and then the same was issued with him. All those documents were submitted to the Electricity Board for getting electricity service connection. However, the electricity officials replied that it is not sufficient for giving electricity service connection and he was required to submit the kist receipt as well as patta pass-book. Again P.W.2 met the accused officer for obtaining patta pass book. Thereafter, the accused officer, after receipt of Rs.100/-, requested P.W.2 to come and collect the patta pass-book at his office on 20.10.2003. Accordingly, on 20.10.2003, P.W.2 met the accused officer and he was informed that the patta pass book has not been received so far and P.W.2 would be informed as soon as the accused officer received the same. P.W.2 was also informed by the accused officer that the same would be handed over at his residence. Thereafter, even after one month, the patta was not received and on 17.11.2003, the accused officer came to the residence of P.W.2 and informed to the father of the defacto complainant (P.W.2) to return the aforesaid four copies of the documents, which was handed over to the accused officer on the earlier occasion. So that, on 19.11.2003, P.W.2 met the accused officer and he was informed that there were minor mistakes in the documents and the same would be rectified and after that, patta could be changed and given to P.W.2. P.W.2 handed over the original certificates under Exs.P.14 to P.18 after taking Xerox copies of the same. Even after one month from collecting the documents from P.W.2, the accused officer had not returned the same, for which, in the month of December, 2003, P.W.2 met the accused officer and enquired about the change of patta and requested him to return the documents, which were collected on earlier occasion. On that day, the accused demanded a sum of Rs.2,000/- from P.W.2 for that purpose. When the same was questioned by P.W.2, he was informed that normally for change of patta, he used to charge a sum of Rs.6,000/-, however, he demanded only Rs.2,000/-. Thereafter, P.W.2 managed and left the place and again on 15.02.2004, P.W.2 met the accused officer and whenever he enquired about the patta, the accused officer reiterated the earlier demand of Rs.2,000/-. Again on 16.02.2004, P.W.2 met the accused officer in Semmangudi market and at that time also, he reiterated the bribe amount of Rs.2,000/-. Thereafter, P.W.2 presented an application for separate patta under Ex.P2 on 20.02.2004 to the Tahsildar and the Tahsildar endorsed the application and handed over the same to the defacto complainant. Thereafter, the defacto complainant handed over the same to the accused officer. Accordingly, on 21.02.2004, P.W.2 along with P.W.4-Sakthivel, who is his cousin brother met the accused officer at his office and handed over Ex.P2 application along with copy of the sale deed. After receipt of the same, the accused officer again demanded Rs.2,000/- from P.W.2. P.W.2 said that he is not willing to pay and left the place. Thereafter, on 23.02.2004, he along with P.W.4 went to the accused officer's house and enquired about the patta pass book and again the accused officer demanded the said sum, for which, P.W.2 replied that he sold paddy and yet to receive the money and after receipt of the said amount, he will give the money to the accused officer. However, the accused informed P.W.2 that he has to pay the money before 5.00 p.m. on 24.02.2004. 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.13-Inspector of Police, District Vigilance and Anti Corruption Wing, Thanjavur under Ex.P.3, enclosing a copy of the application (Ex.P.13) for electricity service connection; copy of the survey sketch (Ex.P.14); copy of the certificate given by Village Administrative Officer, Semmangudi (Ex.P.15); copy of chitta (Ex.P.16); copy of kist receipt (Ex.P.17) and copy of Adangal (Ex.P.18).

(ii)The Inspector of Police, received the complaint under Ex.P.3 and registered the First Information Report in Crime No.4 of 2004 under Ex.P.19. After registering the FIR, P.W.13-Trap Laying Officer deputed two official witnesses viz., P.W.3-shadow witness and one official witness K.Sampath. Thereafter, as per the instructions of P.W.13, P.W.3 and the official witness came to the office of the Vigilance and Anti-Corruption on 24.02.2004 at 2.45 p.m. Thereafter, P.W.13 conducted the phenolphthalein rehearsal test in the presence of P.Ws.2 and 3 and the official witness K.Sampath, for which, the amount of bribe to the tune of Rs.2,000/- consisting of two 500 currency notes-M.O.4 series and ten 100 rupee currency notes-M.O.5 series were received and smeared with phenolphthalein powder. P.W.13 prepared entrustment mahazar under Ex.P4 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. Thereafter, P.Ws.2 and 3 were alighted reminding with earlier instructions to go and meet the accused officer and when they left to meet the accused, they were followed by P.W.13 with his raiding party. P.W.2 went to the house of the accused officer along with P.W.3. P.W.2 enquired the accused officer about the change of patta. On seeing P.W.3, the accused officer enquired about him, for that, P.W.2 informed that he is his cousin brother. Thereafter, P.W.2 handed over the phenolphthalein coated amount of Rs.2,000/- to the accused officer and he received the bribe amount and put it in his pocket and he said that Mahamaham festival is forthcoming and after that, he will do the sub-division and change the patta. Thereafter, P.Ws.2 and 3 came out and gave the pre-arranged signal by flying the dhothi. Immediately, P.W.3 went inside the accused officer house and identified the accused, as instructed by P.W.13. On seeing the raiding party, the accused took the tainted money from his pocket and throw it outside his house through the grill gate. Thereafter, P.W.13 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied. P.W.13 prepared a seizure mahazar under Ex.P.6; observation mahazar Ex.P.20 and rough sketch Ex.P.21 and brought the accused along with M.Os. to the Vigilance office. Thereafter, P.W.13 sent the accused officer for judicial custody and handed over the case records to the another Inspector of Police, Vigilance and Anti-Corruption, Thanjavur, for further investigation.

(iii).P.W.14, the another Inspector of Police, Vigilance and Anti-Corruption took up further investigation in this case. He examined the 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 14 were examined and Exs.P.1 to 26 were marked and M.Os.1 to 6 were produced. When the accused was questioned about the incriminating circumstances, occurrence and evidence, the accused denied the same as false and taken a stand that P.W.2 voluntarily thrusted the amount in his pocket and he immediately thrown the said amount and the thrusted amount was recovered by the Trap Laying Officer. In order to prove the same, D.W.1 was examined and Ex.D.1 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.2,500/- 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 two years and to pay a fine of Rs.2,500/- and in default of payment of fine, the accused shall undergo simple imprisonment for three months for the offence under Section 13(2) r/w 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 Senior counsel appearing for the appellant/accused *inter alia* contented that the appellant is a Village Administrative Officer. Even as per the prosecution case, on 12.10.2003 itself, joint patta was changed in the name of P.W.2 and there is no allegation at the time of changing the joint patta that the appellant was demanding money. Though Ex.P2 application was made by P.W.2 directly to P.W.6, prior to that, there was an allegation against the appellant that he demanded bribe of Rs.2,000/-, for which, P.W.2 made a complaint before the Trap Laying Officer and it is curious to note that the appellant/Village Administrative Officer is a not the competent person to issue patta in favour of the de-facto complainant. In fact, the disputed property was assigned in favour of one Malarkodi and it cannot be a transferable one, as the sale consideration was not completed. Even after the payment of sale consideration, after 20 years only, the said Malarkodi is entitled to alienate the property to the third parties. In the present case, the assignment is in the year 1996. The de-facto complainant purchased the property in the year 2003, within a period of seven years, even prior to the payment of the entire sale consideration as per the assignment. Accordingly, he refused to grant patta in favour of the de-facto complainant, thereby got annoyed and in order to wreck vengeance, he made a false complaint before P.W.13 and in order to succeed in the trap proceedings, voluntarily thrusted the money in his pocket. Immediately thereafter, he returned the money to the de-facto complainant. However, the Trap Laying Officer came to the spot and seized the money.

8.The learned Senior counsel for the appellant would further submit that in the present case, since the appellant is not the competent person to grant patta, there is no motive to accept the illegal gratification from P.W.2 and mere possession of the tainted money will not constitute the offence against the accused, unless the prosecution proved the demand and acceptance. Though immediately after the trap proceedings, the accused officer reported that the amount was borrowed as a loan from P.W.2, however, in the 313 questioning, he denied the receipt of the bribe amount from the de-facto complainant. However, the trial Court without considering the said aspect, convicted the accused, which is un-sustainable one and hence, he prayed for allowing of the appeal and acquittal of the appellant.

9.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that in the present case

P.W.2 is the defacto complainant and P.W.3 is a shadow witness. In the presence of P.W.3, bribe amount was handed over by P.W.2 to the accused officer and the evidence of P.Ws.2 and 3 is well corroborated in the manner in which the accused officer reiterated the earlier demand from P.W.2 and obtained the tainted money from P.W.2. When the demand and acceptance is established, it is for the accused officer to disprove the prosecution case under Section 20 of the Prevention of Corruption Act. In the present case, there is no plausible explanation for the possession of the tainted money by the accused officer and considering the case in entirety, the trial Court has rightly convicted the accused, which is legally sustainable one and hence, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

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

(i). Whether the defence version that the amount of Rs.2,000/- was forcibly thrusted by P.W.2 into the accused officer, is probable and acceptable?

(ii). Whether the trial Court was right in the finding that the appellant is guilty under Section 7 and 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988 and whether the conviction and sentence imposed by the Trial Court warrant any interference?

11. P.W.1-Murugan, is a sanctioning officer at the relevant point of time and he sanctioned the prosecution against the accused. His sanction of the prosecution is marked as Ex.P1. However, the learned Senior counsel has not attacked the sanction of the prosecution. P.W.2 is the de-facto complainant. P.W.3 is a shadow witness, who accompanied with P.W.2. P.W.4 accompanied with P.W.2 for the purpose of proving the initial demand. P.Ws.5 to 11 are revenue officials, from the level of Tahsildar upto the level of Clerk, who were examined for proving that there were earlier patta proceedings under Ex.P2 application. P.W.12 is a Scientific Assistant of Forensic Sciences Department, Chennai, for proving the phenolphthalein test and his certificate is marked as Ex.P.12. P.W.13 is the Trap Laying Officer. P.W.14 is an investigating officer, who filed the charge-sheet.

12.The entire prosecution case revolves around the evidence of P.Ws.2, 3 and 13-Trap Laying Officer. It is well-settled that the evidence of trap witness must be decided in the way as that of any other interested witness. This Court has to look for independent corroboration before convicting the accused person. However, the evidence of bribe giver has to be scrutinized very carefully and it is for the Court to consider the appropriate evidence in the proper manner and decide whether the conviction is based upon it or not in the circumstances of the case. Therefore, as a Rule of Law, it cannot be laid down that the evidence of every complaint in a bribe case, should be corroborated otherwise it cannot be acted upon. In the light of the above facts and circumstances of the case, whether the evidence of P.W.2 on payment of bribe amount to the appellant could be accepted is the only short point that has to be considered in this appeal. P.W.2 purchased the assigned property from one Malarkodi and after purchase, he digged a bore-Well and thereafter, he approached the appellant for change of patta. It is the admitted case of the prosecution as well as the appellant that initially the sketch, chitta, kist and adangal were handed over by the appellant to P.W.2 and the same is marked as Exs.P.7 to P.11. However, it is also the admitted case of the prosecution that initially the joint patta was granted in favour of P.W.2. However, the said revenue records were produced before the Electricity Board, but the Electricity Board returned the above said documents for filing of proper documents, in which, he approached the appellant for grant of patta. Thereafter, the accused officer collected the entire documents from P.W.2 and assured him to issue a fresh patta. Though on the initial date there was no demand of money, however, on the subsequent dates, the accused officer demanded Rs.2,000/- as bribe for grant of patta in the presence of P.W.4. On the very same day, he presented an application before P.W.6-Head Quarters Deputy Tahsildar and P.W.6 endorsed and handed over the same to the accused officer. Thereafter, on 21.01.2004, again P.W.2 approached the accused officer for issuance of patta. Again, he reiterated the earlier demand of Rs.2,000/- from P.W.2. Thereafter, P.W.2 lodged a complaint against the accused officer. After completing the initial formalities, P.Ws.2 and 3 went to the house of the accused officer along with P.W.3. P.W.2 enquired the accused officer about the change of patta. On seeing P.W.3, the accused officer enquired about him, for that, P.W.2 informed that he is his cousin brother. Thereafter, P.W.2 handed over the phenolphthalein coated money of Rs.2,000/- to the accused officer and he received the bribe amount and put it in his pocket and he said that Mahamaham festival is forthcoming and after that, he will do the sub-division and change the patta. Thereafter, P.Ws.2 and 3 came out and gave the pre-arranged signal by flying the dhothi. Immediately, P.W.3 went inside the accused officer's house and identified the accused, as instructed by P.W.13. On seeing the raiding party, the accused took the tainted money from his pocket and throw it outside his house through the grill gate. Thereafter, P.W.13 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied.

13.The evidence of P.W.2 is well corroborated with the evidence of P.W.3, with regard to demand and acceptance, except one portion that he collected Ex.P.2-application and sale deed were recovered by Trap Laying Officer. Even if there is no corroboration in between the evidence of P.Ws.2 and 3 in respect of the said recovery, however, the recovery mahazar has itself proved that Ex.P.2 application and the sale deed recovered from the accused officer. Hence, there is no substance in the arguments advanced by the learned Senior Counsel appearing for the appellant.

14.The acceptance of the bribe amount is proved by P.W.2 and the official witness. P.W.2 who accompanied with P.W.3, recovered the tainted money from the appellant is well proved by the evidence of P.W.3; Ex.P.2 application, recovery mahazar and other contemporaneous documents. The recovery of the amount coupled with the evidence of P.W.3 is a clinching evidence against the appellant/accused. It is also proved from the evidence of P.W.2-defacto complainant and the official witness P.W.3 that the accused had received Rs.2,000/- and the said amount was paid to him towards remuneration as illegal gratification for grant of patta. The prosecution has clearly established the demand, acceptance of bribe money and also its possession. When the acceptance and the possession are proved, automatically the presumption under Section 20 of the Prevention of Corruption Act operates against the accused. It is for the accused to disprove the prosecution case by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Prevention of Corruption Act. In the present case, there is no proper explanation by the appellant/accused for his possession. In fact, immediately after the trap proceedings, the appellant/accused has taken a stand that the said amount was borrowed amount. However, he changed his version during 313 Cr.P.C. questioning that the amount was forcibly thrusted by P.W.2 without his willingness and hence, he has thrown the same out of the grill gate, which cannot be acceptable for the reason that the appellant/accused has no proper explanation for the possession of the said amount. Hence, the prosecution has successfully discharged its initial burden and established that the said amount was possessed by the appellant/accused as illegal gratification for grant of patta.

15.Further, this Court noticed that the Trap laying Officer had no interest against the appellant, unless the appellant proves his case by way of producing any document that the official witness were biased against him. In the present case, there is no document to prove that P.W.2 had animosity against the accused officer, thereby he thrusted the money in his pocket.

16.On a perusal of the above evidence, it is found that the prosecution has placed sufficient materials proving that the appellant had demanded and accepted the bribe money from the defacto complainant, as illegal gratification. 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 that the accused was guilty and accordingly, convicted him. Having gone through the Judgments and careful analysis of the findings rendered by the court below and other relevant materials, this Court finds that it is very difficult to come to a different conclusion and that the findings of the trial Court is ought to be confirmed.

17.However, the learned counsel for the appellant/accused would submit that the appellant is now aged about 65 years and he is suffering from old age ailments and hence, he requested this Court to show some leniency and prayed for reduction of sentence.

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

19.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 ()

// True Copy //

Sub Assistant Registrar(CS)

To

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

2.The Superintendent of Police,
Tricy District

3.The Director General of Police
Mylapore, Chennai 4

4.The District Collector,
Tricy District

5.The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Thanjavur, Thanjavur District.

6. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai.

7.The Record Keeper,
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