BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 22.01.2019
CORAM:
THE HONOURABLE Mr.JUSTICE P.VELMURUGAN
Crl.A.(MD)No.509 of 2018

G.Ramasamy ... Appellant/Sole Accused

Vs.

The State of Tamil Nadu
represented by its
The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai.
[Crime No.07 of 2008] ... Respondent/complainant

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records of judgment dated 23.10.2018 in Special CC No.44 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai in Crime No.7 of 2008 on the file of the respondent Police and set aside the same and acquit the appellant/sole accused.

For Appellant : Mr.T.Layapathiroy
For Respondent : Mr.APG.OHM. Chairma Prabhu,
Government Advocate (crl side)

J U D G M E N T

This appeal has been filed seeking to set aside the judgment dated 23.10.2018 in SplCC No.44 of 2014 rendered by the Special Judge for trial of cases under Prevention of Corruption Act, Sivagangai.

2.The case of the prosecution is that the de facto complainant [PW.2] approached the appellant, who was the Village Administrative Officer of Saloor Group at Sivagangai District, for transfer of patta. The appellant perused the documents and since some of the properties were already in the name of his father and for 4 more survey numbers patta had to be transferred to his father's name. The appellant noticed that for the lands in survey Nos.1305 and 1072 land tax of Rs.3,200/- was due, which was subsequently paid by him and receipt was also given. Subsequently, the appellant had demanded Rs.7,000/- as illegal gratification for transfer of patta for the remaining survey numbers and at request of PW.2, the appellant reduced the same to Rs.6,000/-.Further, the appellant on 14.11.2008 initially demanded part amount of Rs.3,000/- out of Rs.6,000/- and instructed him to get thump impression and signature from his father and brother respectively, in white papers and the de facto complainant since was not ready to pay the bribe amount, made a complaint and based on the complaint, a case was registered.

3.Based on the FIR, trap was planned by the Trap Laying Officer (herein after shall be referred to as 'TLO'). Two independent witnesses were summoned by the TLO and subsequently, PW.2, and the independent witness and the complainant was also present as directed by the TLO. The TLO explained about the complaint given by PW.2, to the independent witness and conducted a pre trap demonstration proceedings. The serial numbers of the money meant for giving as bribe were noted down in the entrustment mahazar prepared by TLO and later he coated the currencies with phenolphthalein powder and gave them to PW.2. The TLO instructed PW.2 to approach the appellant and if the appellant demanded the money, then only he should give the money to the appellant and instructed him to show signal, after accepting the money. Accordingly, on 14.11.2008 the trap was not executed because the office of the appellant was locked and the same was planned for the next day at request of PW.2 On 15.11.2008 at 12.35 the de facto complainant went to the office of the appellant and met him, on seeing him he reiterated the earlier demand and after demanding the money, PW.2 handed over the money to the appellant, the appellant received the money, counted and kept it in his shirt pocket and the appellant also received the papers containing the thump impression and signature of PW.2's father and brother.

4.Then PW.2 gave the pre arranged signal to the TLO. On receiving the pre arranged signal from PW.2, TLO along with his team entered into office of the appellant and introduced himself to the appellant and conducted phenolphthalein test, which proved positive. Then the TLO recovered the tainted money through recovery mahazar and also recovered certain documents obtained signatures from the appellant and independent witnesses. Then the TLO placed the matter before the Investigating Officer. The Investigating Officer after conducting investigation laid a charge sheet against the appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 [herein after referred to as 'PC Act'] before the, Special Judge, Sivagangai.

5.On the side of the prosecution 13 witnesses as PW.1 to PW.13 were examined, 47 documents as Ex.P.1 to Ex.P.47 were marked and 6 material objects as MO.1 to MO.6 were exhibited.

6.After completion of the prosecution side evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant and the same was denied as false. On the side of the defence no witness was examined and one document was marked as Ex.D.1.

7.After completion of the trial and after hearing the arguments on either side, the Special Judge, found the appellant / accused guilty and convicted and sentenced him to undergo rigorous imprisonment for a period of three years and imposed a fine of Rs.1,000/-, in de fault to undergo simple imprisonment for a period of six months, for having committed each offence punishable under Sections 7 and 13(2) r/w 13(d)(1) of PC Act.

8.Aggrieved against the conviction and sentence, the accused has preferred the present appeal.

9.The learned Counsel for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. The sanctioning authority has not applied his mind and the sanction has been accorded mechanically, therefore, the sanction itself is defective. Soon after the completion of the trap proceedings, statement was not obtained from the appellant, which is violative of Rule 47 of Vigilance Manual.

10.The learned Counsel further submitted that the charge has not been framed properly. No charge was framed against the appellant under Section 13(2) of PC Act. The non framing of charge would be prejudiced to the appellant, since, it is a serious charge, the appellant was not in position to defend such charge by letting in evidence and it would affect the right of fair trial. Therefore, the conviction under Section 13(2) of the Act is not sustainable.

11.The further submission is that the amount recovered from the appellant by the TLO is the amount given by PW.2 for payment land tax and it is not a bribe money. The Special Judge has failed to consider the same. It is an usual practice in the village and even they used to give receipt even before making payment, considering the relationship maintained by the local people, which the Judge has failed to consider. There was enmity between the appellant and PW.2, the appellant has refused to levy tax for 4 survey numbers, as the patta was not transferred in the name of the father and the brother of PW.2. PW.2 was working as an Agricultural Coolie in the filed of one Pandiarajan's, who had served as Inspector of Police, Vigilance and Anti Corruption and on his instigation alone, the PW.2 had given a false complaint against the appellant and that is the reason why, even though the accused being a group - D employee, the DSP has taken up the further investigation and filed the charge sheet. The Special Judge has not considered these facts. It is to be noted that neither the PW.2 nor his father has given application for patta transfer in the Taluk Officer and the appellant being the Village Administrative Officer has no power to issue patta in the name PW.2, on the alleged payment made by him for effecting patta transfer is unacceptable. Further he submitted that the Investigating Officer has not shown any presence of coin phone booth in the observation mahazar and the rough sketch and he has not examined the shopkeeper which is also fatal to the case of the prosecution.

12.Further he would submit that the chemical analysis report Ex.P. 38 is not acceptable as P.W.10 the Chemical Assistant has deposed that the bottles were not received in a card board box, but PW.11 has deposed that the bottles were sent in a card board box duly sealed, which also creates doubt. Only when the demand and acceptance is proved, the presumption under Section 20 of the PC Act will come into play. In this case, the prosecution has not proved the demand and acceptance and therefore, mere recovery from the appellant will not constitute the offence. Further, he would submit that the appellant need not to rebut the presumption by letting in any evidence or by producing documents. The presumption can be rebutted by preponderance of probabilities or probable defence. Thus, all these facts have not been considered by the Special Judge and hence, the judgment of the Special Judge warrants interference.

13.The learned Senior Counsel submitted that therefore, mere recovery of the tainted money is not sufficient to convict the accused, when the appellant had given plausible explanation for the same. From the above, it is clear that the prosecution has failed to prove its case. He also placed reliance on the following judgments:

1.***Vinubhai Ranchhodbhai Patel Vs Rajivbhai Dudabhai Patel & others, reported in 2018 STPL 6893 SC;***

2.***Dalbir Singh Vs State of Uttar Pradesh, (2004) 5 SCC 334;***

3.C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala, reported in (2009) 3 SCC 779;

4.State Through Central Bureau of Investigation Vs Dr.Anup Kumar Srivastava, reported in 2017 STPL 10016 SC;

5.State of Kerala Vs C.P.Rao, reported (2011) 6 SCC 450;

14.The learned Government Advocate appearing for the respondent Police submitted that the prosecution has proved its case beyond reasonable doubt. The evidence of PW.2 clearly proves the initial demand and the evidence of PW.2 and PW.3, prove the demand and acceptance on the date of occurrence. From the evidence of PW.3 and PW.12, the prosecution has proved the recovery of money on the date of occurrence. The evidence of PW.10 and the chemical analysis report Ex.P.38 shows that the sample received from the Court gave positive result and the presence of the substance of Sodium Carbonate Solution. At the time of paying the tax, no VAO would give receipt for more than Rs.3,000/-. As a Public Officer, once he issued receipt, he has to account for the same. In the judgment at paragraph No.2 it is clearly stated that the appellant was provided with free copy of documents and charge framed against the accused was explained and when questioned about the same, he pleaded not guilty and sought trial. Therefore, it is clear that he was well aware of the charge and further to be noted, that he has not challenged the charge and contested the case and now he cannot raise any dispute over the charge on technical grounds. Further Section 464 of CrPc says that no case will be vitiated on the ground that mere charge was wrongly framed. Further, the copy of the charge sheet was also provided under Section 207 of CrPC. The charge is very clearly framed under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The Special Judge, has considered all the facts and circumstances of the case and after considering the oral and documentary evidence, has rightly concluded that the appellant committed the offence as mentioned above.

15.A reading of the evidence of PW.1 shows that the Sanction Authority had only after perusing all the materials and only after satisfying himself had accorded sanction. Therefore, the sanction order holds good.

16.The evidence of PW.2 shows that initial demand of Rs.7,000/- made by the appellant from the de facto complainant on 12.11.2008, and later reduced the same to Rs.6,000/- on 14.11.2008 and directed to make the initial payment of Rs.3,000/- out of the said 6,000/-. He further deposed about the complaining of the demand made by the appellant and the Pre trap demonstration. Further PW.2 clearly deposed that the acceptance of the money by the appellant on 15.11.2008 in his office and the recovery of the tainted money from the appellant. Therefore, the demand, acceptance and recovery are proved from the evidence of PW.2 and also from the complaint -Ex.P.3 preferred by PW.2.

17.PW.3, N.Karthikeyan, who is a shadow witness, had stated that as he was directed by his Superior, he went to the Office of the Vigilance and Anticorruption Office, and met the TLO at where, the TLO had explained him about the complaint preferred by the PW.2 and he conducted the pre trap demonstrations and the serial numbers of the currency notes were noted down by preparing entrustment mahazar and the phenolphthalein powder coated money was given to the PW.2 and the TLO instructed PW.4 to accompany PW.2 and to watch at the time when PW.2 meets the appellant. Accordingly, they went to the office of the appellant and on seeing the de facto complainant, the appellant asked as to whether he brought Rs.3,000/- demanded by him. Then PW.2 gave the tainted money to the appellant, he received the money by his hands and kept in his shirt pocket and he demanded the balance amount of Rs.3,000/-. Then they came out and gave the pre arranged signal. Subsequently, he had spoken that TLO came inside the office of the appellant and conducted the phenolphthalein test on his hands, which proved positive and the comparison of the recovered money with the entrustment mahazar. He had spoken about the preparation of recovery mahazar also. So, from the evidence of PW.3, it is clear that the appellant had demanded and accepted the money and the same was also recovered. Therefore, demand, acceptance and recovery are proved from the evidence of PW.3 also.

18.PW.12 - TLO, who had deposed that he received a complaint against the appellant on 14.11.2008 from the de facto complainant that the appellant demanded bribe for patta transfer, in order to get bank loan. After going through the complaint, he planned for a trap and summoned two independent witnesses and held pre trap demonstrations in front of the PW.2, PW.3, PW.4 and the independent witnesses and gave the phenolphthalein coated money to the PW.2 and instructed him to meet the appellant and to give the money, only if demand was made by the appellant and asked PW.3 to accompany him and to watch the happening when they met and prepared the observation mahazar and they left the place and assembled near the office of the appellant. Further, PW.2, and PW.3 went inside the office of the appellant. He had further deposed about the receipt of the pre arranged signal from P.W.2. He along with his team went inside the office, PW.2 identified the appellant then PW.12 introduced himself and he conducted phenolphthalein test on both his hands, which proved positive and the money was compared with the entrustment mahazar and the same was matched and he recovered the tainted money through recovery mahazar and placed the matter before the Investigating Officer. Therefore, from his evidence the recovery of the tainted money is proved.

19.The evidence of PW.16, who was the Assistant Director Regional Forensic Laboratory, who conducted the chemical analysis, shows the presence of the phenolphthalein in the solution through which the test was conducted, which is corroborated by EX.P.18.

20.The learned Counsel for the appellant submitted that there are many contradictions among the prosecution witnesses.

21.A reading of the entire materials placed on record shows that the above said contradictions are not material contradictions, which is not fatal to the case of the prosecution.

22.Though the defence taken by the appellant that the appellant has no role or power and he was not the authority for transferring the name in the patta, he has asked to get signature and thumb impression of his brother and father in a blank paper. When he has no role or authority, why he has given the above instructions. So the defence of the appellant is not acceptable.

23.The defence taken by the appellant with regard to non framing of particular charge, as pointed out by the learned Government Advocate, the Special Judge in his judgment has explained about the issuance of free copy of the documents with the charge sheet and after framing of charges he explained the charges to the appellant and recorded his subsequent denial and his option for trial. Further, the said charge has not at all been challenged. That apart, Section 464 of CrPC deals with the framing of charge and the wrong framing of charge would not vitiate the case of the prosecution. Hence, the defence taken by the appellant is totally unsustainable.

24.Even though, the appellant need not prove his defence by direct evidence, he can very well establish his defence from preponderance of probabilities or probable evidence. Whereas in this case, the appellant had made an attempt to do so, but failed to prove his defence in the manner known to law.

25.Though there is no dispute or quarrel in respect of the legal proposition in the referred to citations, the citations referred to by the learned Senior Counsel for the appellant are not applicable to the case on hand, when the demand, acceptance and recovery are clearly proved with cogent oral and documentary evidence.

26. In view of the foregoing discussion, from the evidence of PW.1, PW.2, PW.3 , PW.4 and PW.12 along with Ex.P.1, Ex.P.3, Ex.P.32, this Court finds that the prosecution has proved its case beyond reasonable doubt that the appellant had demanded illegal gratification and accepted it and the same was recovered from the appellant. In other words, the demand, acceptance and recovery are proved. There are no reasons to discard or disbelieve the prosecution witnesses and documents. The trial Court has elaborately discussed and appreciated the evidence and the materials and rightly convicted the appellant. Therefore, there is no reason to interfere with the judgment of the trial Court and the appeal is liable to be dismissed.

27.Further, a perusal of the judgment of the trial Court shows that the trial Judge has dealt with each and every aspect and has appreciated the oral evidence and documents in a perspective manner and rendered the judgment.

28.In view of the foregoing discussion, this Court does not find any merit in the appeal and the same is liable to be dismissed.

29.In the result, the present criminal appeal is dismissed and the judgment dated 23.10.2018 in Special CC No.44 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai is hereby confirmed. The trial Court is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Special Judge,
   Special Court for Trial of Cases
   under the Prevention of Corruption Act,
   Sivagangai

2. The Inspector of Police,
   Vigilance and Anti Corruption,
   Sivagangai.

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

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+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-42398[F] dated 23/01/2019)

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