BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **24.01.2019**
CORAM :
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.A.(MD) No. 558 of 2018

R. Varadharajan ...Appellant/Accused

Vs.

State Represented by its
Inspector of Police,
Vigilance and Anti Corruption
Police Station, Tuticorin.
(Crime No. 4 of 2011) ...Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to set aside the Judgment, dated 27.12.2018 in Special Case No. 01 of 2012, on the file of the Chief Judicial Magistrate Court and Special Court for Prevention of Corruption Act, Tuticorin.

For Appellant : Mr.K.V. Sajeev Kumar

For Respondent : Mr.Chandrasekaran
Additional Government Pleader.

JUDGMENT

The appellant in Special Case No. 01 of 2012 on the file of the Chief Judicial Magistrate Court and Special Court for Prevention of Corruption, Tuticorin, is the appellant herein. The appellant stood charged for the offences under Sections 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. When the appellant was questioned as to the charges, he pleaded not guilty and therefore, he was put on trial. The learned Special Judge, after full-fledged trial, found the appellant guilty for the offences under Sections 7 and 13(2) r/w 13(1)(d) of The Prevention of Corruption, 1988. The appellant was accordingly convicted and sentenced to undergo 2-years Rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo 3-months Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act and 2-Years Rigorous Imprisonment and to pay a fine of Rs.3,000/-in default to undergo 3-months Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the said sentences shall run concurrently. Challenging the above said judgment of conviction and sentence, the appellant is before this court with this criminal appeal.

2(i). P.W.1/Murugesan stated in his evidence that he was working as Survey Assistant Director and holding as Additional charge of Assistant Director from 01.08.2011 to 05.12.12 and on 17.11.2011, he received a letter along with copies of First Information Report and statement of witnesses from the office of Commissioner-cum-Director. He further stated that on 23.01.2012, Inspector of Police, Vigilance and Anti Corruption submitted the connected documents. After perusing the available documents, P.W.1/Murugesan accorded Ex.P.1/Sanction order to prosecute against the appellant.

2(2). P.W.2/Ayyappan stated in his evidence that he was running a business of computer sale and service. He further stated that the appellant was working as Surveyor, Tiruchendur Taluk office, Udangudi Firka. He approached the appellant to measure the area in survey no.889/1B and he was instructed by the appellant that P.W.2 has to pay Rs.40/-in State Bank of India. On 14.07.2011, he applied for separate patta.Thereafter, on 16.08.2011, P.W.2/Ayyappan went to the Udangudi Grama Savadi office and met the appellant and gave the application along with the copies of sale deed, patta, bank challan. For that the appellant demanded bribe money of Rs.3000/- each from P.W.2/Ayyappan and P.W.3/Amal Anthony to measure the property. Again on 17.08.2011 at about 01.45 hrs., P.W.2/Ayyappan contacted the appellant through cellphone. For that, the appellant again demanded Rs.6000/-. P.W.2 & P.W.3 were not willing to pay bribe money. On 18.09.2011, P.W.2 & P.W.3 had approached the Inspector of Police, Vigilance and Anti Corruption, Tuticorin and filed Ex.P.3/complaint, in which P.W.3 had signed as witness. A signature of P.W.2 in the FIR was marked as Ex.P.4. At about 12 hrs., independent witnesses Palannan and Murugavel were present. Inspector of Police explained about the description of the complaint. P.W.2/Ayyappan was instructed by the Inspector of Police to produce Rs.6000/- and P.W.2 produced the currency notes of Rs.1000 and Rs.500/-(8 notes). The Inspector of police demonstrated the significance of the phenolphthalein test. After paying the bribe money to the appellant, P.W.2 was instructed to give a signal by wiping his head in two times, if it is night hours to give a signal by lighting match sticks twice. The above said happenings were noted in Ex.P.5/mahazar. The trap team went to the lodge which was located in Trichendur bus stand. After reaching there when P.W.2 contacted the appellant over cell phone for which the appellant asked PW2 to come to the back side of Taluk Office. Thereafter, P.W.2 went there along with P.W.3 and P.W.4. Again P.W.2 contacted the appellant over cell phone. For that the appellant instructed the P.W.2 to come to the room No.12 in Senthilbavan Lodge. Thereafter, they went there and P.W.2 /Ayyappan handed over the bribe money of Rs.6000/- to the appellant and the appellant received the same in his right hand and folded his left hand. P.W.2 came out and gave pre-arranged signal to the Inspector of Police by wiping his head in two times. The trap team rushed to the spot and recovered M.O.1/(500 x 8) and M.O.2/Thousand rupee notes.

2 (3). P.W.3/Amal Anthoni Amrose is running driving school. P.W.3 applied for a separate patta in the office of Tiruchendur Taluk and the application along with other documents were marked as Ex.P.6. On 19.08.2011, he received a postal card/Ex.P.7 and the Ex.P.7 contained that P.W.3 was directed to appear before the Village Administrative Officer, Thandapathu village on 19.08.2011. On 16.08.2011, P.W.3 approached the appellant to survey his land. For that the appellant demanded a bribe of Rs.3000/-from P.W.3. He is not willing to pay bribe money. So, he and P.W.2/Ayyppan went to the Office of the Vigilance and Anti-Corruption, Tuticorin. He was signed as witness in Ex.P.3/Complaint. He is a accompanying witness and he corroborated the evidence of P.W.2/Ayyppan. P.W.4 /Murugavel is a accompanying witness with P.W.2/Ayyppan and P.W.3/Amal Anthoni Amrose. P.W.4 corroborated the evidence of P.W.2 & P.W.3.

2(4). P.W.5/Muthuraj Peter/Inspector of Police, Vigilance and Anti Corruption has stated in his evidence that when he was on duty on 18.08.2011, he received a complaint from P.W.2/Ayyppan and P.W.3/Amal Anthoni Amrose Pirimen and registered a case in Crime No.4 of 2011 for the offences under Section 7 of Prevention of Corruption Act. Challan along with other documents were marked as Ex.P.7. P.W.2/Ayyppan produced Rs.6000/- (Rs.500 x 8 and Rs.1000 x 2). The currency note numbers were noted in the mahazar. He demonstrated the significance of the phenolphthalein test. He prepared Ex.P.5/mahazar in which he and witnesses had signed. Thereafter, they started to the spot. At about 04.15 p.m., P.W.2, P.W.3 and Palvannan went into the room of the appellant which is located in Senthilvanam Lodge. After receiving the bribe amount, P.W.2 came out and gave a signal. The trap team went to the spot. He collected M.O.3 & M.O.4/Bottles. He recovered bribe money of Rs.6000/- from the appellant and the numbers of the currency notes were tallied. He recovered cell phone /M.O.5. He recovered M.O.1 & M.O.2/currency notes. He prepared Ex.P.10/mahazar. In which witnesses had signed. He arrested the appellant and he added an offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and the report was marked as Ex.P.12. Information was marked as Ex.P.13. He prepared Ex.P.27/rough sketch. He handed over the documents to Raju, Inspector of Police for further investigation.

2(5). P.W.6/Balasundarm stated in his evidence that in the year 2011, may month he was working as Junior Assistant, Taluk Office, Tiruchendur. He registered Ex.P.2/petition, Ex.P.8/Petition of Santheeshkumar and Manonmani and Ex.P.9/petition of Amal Anthoni Amrose Piriman. He obtained signature of Deputy Tahsildar and forwarded the same for further proceedings to the Land Acquisition Officer.

2 (6). P.W.7/T.V. Ramesh has stated in his evidence that, during the year 2010/2011 he was working as Deputy Tahsildar, Tiruchendur. He knew the appellant. On 14.07.2011, he received petitions from Anthoni, Ayyappan and others for issuing separate

patta and on 20.07.2011, he forwarded the same to the Chief surveyor for further action.

2 (7). P.W.8/Rengan, when he was working as Deputy Inspector, on 14.07.2011, P.W.2/Ayyappan gave a petition along with challan, patta, copy of deed to the Tahsildar for issuing separate patta and was marked as Ex.P.14 and the same was approved and signed by the Regional Deputy Tashildar and forwarded to the appellant for further action. Entry in RTR register Sl.No.525 was marked as Ex.P.15, Despatch Register was marked as Ex.P.16 and Sl.No.399 of the entry in the said register was marked as Ex.P.17.

2(8). P.W.9/Arunachalam/Senior Draftsman has stated in his evidence that he received petitions from P.W.2 & P.W.3 and other witnesses. He registered the above petitions in the register and forwarded the same to the appellant for further action. The petitions were entered in the register by the appellant.

2(9). P.W.10/Mallika/Assistant stated in his evidence that on 17.11.2010, she was working as Assistant, Tauk Office, Tirchendur. Her duty is to maintain the casual leave register, attendance and pay bills. As per register, the appellant had availed casual leave on 12.08.2011, 13.08.2011 and permission on 14.08.2011 and 15.08.2011 and the entry in page No.119 in Casual leave register was marked as Ex.P.18.

2(10). P.W.11/Murugan/ Village Administrative Officer stated about the meeting of the witnesses with appellant. P.W.12/Seetharaman/Superintendent has stated in his evidence that the appellant was holding additional charge as Taluk Firka surveyor and the related document was marked as Ex.P.19.

2(11).P.W.12/Seetharaman/Superintendent has stated in his evidence that when he was on duty on 15.06.2010, the appellant was promoted as additional charge of Taluk Firka surveyor as per proceedings No.A1/3852/2010, dated 15.06.2010 and the proceedings were marked as Ex.P.19.

2(12). P.W.13/Mayavan stated in his evidence that he was working as Mansion incharge of Senthil Bavan lodge. He further stated that in the said mansion, the appellant was staying as tenant in room No.12 and his room rent was Rs.800/-. The copy of the register containing the monthly payments details towards rent were marked as Ex.P.20.

2 (13). P.W.14/Subramanian stated in his evidence that, during the period from 2008 to 2014, he was working as Assistant General Manager, BSNL. Tuticorin. On 22.08.2011, he received a letter from the Inspector of Police, Vigilance and Anti Corruption, Tuticorin asking the address and call details of the cell phone Nos.9842533395 and 9486471015. He sent the above details in which he was signed. The above said document was marked as Ex.P.21.

2 (14). P.W.15/Muthu John has stated in his evidence that, when he was working as Head Constable, Vigilance and Anti Corruption, Tuticorin, he handed over the FIR to the learned Chief Judicial Magistrate, Tuticorin and the letter for chemical analysis along with history of case. The bottles were sent for Chemical Lab, Chennai and after completing the chemical analysis, the same were collected along with chemical report and handed over to Chief Judicial Magistrate Court, Tuticorin.

2 (15). P.W.16/Gomathi, Head Clerk, Chief Judicial Magistrate Court, has stated in her evidence that, he sent a letter to the Forensic Science Lab, Chennai through P.W.15/Muthu John. On 30.08.2011, she received a chemical report ref. no.437/2011.

2(16). P.W.17/ Rajaram/Scientific Officer, Tamilnadu Forensic Lab, Chennai has stated in his evidence that, on 26.08.2011 he received a letter No.3032/2011 dated 25.08.2011. He analysed the hand washes of the appellant. He prepared a chemical analysis report reference No.437/2011 dated 30.08.2011 and the same was forward to the Chief Judicial Magistrate Court, Tuticorin.

2(17). P.W.18/Raju/Inspector of Police has stated in his evidence that, on 04.08.2007 he took the case for investigation and examined witnesses and recorded their statements. He collected documents Ex.P.23, Ex.P.24, Ex.P.25 and Ex.P.26. He obtained Ex.P.1/sanction order. After completing investigation, on 28.02.2012, he filed charge sheet against the appellant.

3. The learned Special Judge, Chief Judicial Magistrate, Tuticorin, after completing the prosecution evidences, the incriminating circumstances was put to the appellant under Section 313(1)(b) of Cr.P.C. The appellant denied the same as false evidence. No witness was examined and no document was marked on the side of the appellant. After considering the oral and documentary evidence, the trial Court found that the appellant was guilty and convicted him for the offence under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and sentenced him as stated above. Aggrieved against the judgment of conviction and sentence passed by the trial Court, the accused has preferred the present appeal.

4. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal side) appearing for the respondent and also perused the available records.

5. The learned counsel for the appellant would submit that the prosecution failed to prove the demand made by the appellant and the prosecution failed to establish the demand of illegal gratification by the appellant. He further would submit that there was no corroboration for the demand made by the appellant on 16.06.2010 i.e., two days prior to the actual trap. He further

would submit that the Investigating Officer was not competent person to investigate the offence and the officer in the cadre of Deputy Superintendent of Police has to investigate the offences under Prevention of Corruption Act.

6. On the contrary, the learned Government Advocate (Crl. side) would contend that the Inspector of police, Vigilance and Anti corruption cell are authorised to investigate on the directions of the Deputy Superintendent of Police under Section 17 of the Act. He would further submit that the tainted money was recovered from the appellant and there are strong evidences against the appellant to prove the case of the prosecution.

7. Considered the rival submissions made on either side.

8. This Court has considered the entire facts and circumstances of the case and also the oral and documentary evidence adduced by the prosecution and also the arguments advanced by both the learned counsel and also the Judgment of the learned Trial Judge. As the appellate Court is the final Court of fact finding Court, this Court has independently considered the case and arrived at the conclusion.

9. In this case, it is worthwhile to refer the deposition of P.W.2. P.W.2 is the defacto complainant who made the complaint/Ex.P.3 and at his instance the Vigilance and Anti Corruption Officials have initiated a trap. On 16.08.2011, P.W.2/Ayyappan went to the Udangudi Grama Savadi office and met the appellant and gave the application along with the copies of sale deed, patta, bank challan. For that the appellant demanded bribe money of Rs.3000/-each from P.W.2/Ayyappan and P.W.3/Amal Anthony to measure the properties. Again on 17.08.2011 at about 01.45 hrs., P.W.2/Ayyappan contacted the appellant through cellphone. For that, the appellant again demanded Rs.6000/-. When P.W.2 contacted the appellant over cell phone he instructed the P.W.2 to come to back side of Taluk Office. Thereafter, P.W.2 went there along with P.W.3 and P.W.4. Again P.W.2 contacted the appellant over a cell phone. For that the appellant instructed the P.W.2 to come to the room No.12 in Senthilbavan Lodge. Thereafter, they went there at that time also the appellant reiterated his demand and P.W.2 /Ayyappan handed over the bribe money of Rs.6000/- to the appellant and the appellant received the same in his right hand and folded his left hand. P.W.3/Amal Anthony Amrose and P.W.4/Murugavel corroborated the evidence of P.W.2.

10. So, P.W.2/Ayyappan has spoken about the demand made by the appellant and also deposed about the acceptance of the tainted money by the appellant and the same were corroborated by the P.W.3/Amal Anthony Amrose and P.W.4/Murugavel.

11. The recovery of the tainted money was spoken by P.W.5/Muthuraj/Trap Laying Officer/Inspector of Police, Vigilance and Anti Corruption and the P.W.4 also corroborated the recovery as spoken by P.W.5 and also preparing contemporaneous records,

Ex.P.10/recovery mahazar there on. From the above evidences of P.W.2/Ayyappan, P.W.3/Amal Anthony Amrose and P.W.4/Murugavel and from Ex.P.10/recovery mahazar of M.O.1 to M.O.5, the demand, acceptance and recovery of the tainted money M.O.1 & M.O.2 series from the appellant were clearly established by the prosecution and the prosecution discharge its initial onus.

12. The learned counsel for the appellant in his arguments contended that mere recovery of the tainted money will not prove the receipt of the tainted money as bribe. It is true that mere receipt of the tainted money will not amount to proof of acceptance of the bribe automatically. But once the prosecution discharge the initial onus there is a presumption as per Section 20 of the Prevention of Corruption Act that the tainted money was received for a reward or motive. But, this presumption is a rebuttal presumption. In this case as already discussed, the prosecution has clearly established the demand and reiteration of the appellant with the P.W.2/Ayyappan 17.08.2011 as alleged by the prosecution. The obtainment of the tainted money M.O.1 & M.O.2 series were also established by the prosecution.

13. So, to constitute an offence under the Prevention of Corruption Act, three ingredients viz, Demand, acceptance and the recovery of the amount is a sine qua non and that onus is always on the prosecution to discharge initial burden and once the initial burden is proved then the onus shift to the accused. Under Section 20 of the PC Act, the presumption is statutory presumption and the same is rebuttable presumption, it is for the accused to rebut the presumption.

14. In this case, as already discussed the initial demand on 18.07.2011 was clearly spoken by P.W.2/Ayyappan and the same was also available in Ex.P.3/complaint. P.W.3 and P.W.4 also deposed about the visit of the appellant. Further P.W.2/Ayyappan spoken about the demand, reiteration made by the appellant on 18.07.2011 at his office when he met the appellant along with P.W.3/Amal Anthony Amrose and P.W.4 corroborated the same. So, initial onus was established from the evidence of PW2 to PW5 and also while considering the Ex.P.10/recovery mahazar and hence the onus is shifted to the appellant to rebut the presumption under Section 20 of the Prevention of Corruption Act. It is true that mere receipt of amount of money by the appellant is not sufficient to prove the guilt.

15. As argued by the learned Government Advocate (Crl. Side), the P.W.4/Murugavel an officer working in the Government Department has no grudge or animosity against the appellant. Likewise, P.W.5/Muthuraj Peter/Inspector of Police also a Police officer working in the State of Tamil Nadu has no necessity to implicate the appellant falsely in a trap case. While considering along with the materials and the evidences of P.W.2/Ayyappan, P.W.3/Amal Anthony Amrose, PW4/shadow witness and P.W.5/Inspector of Police and the contemporaneous records Ex.P.10/recovery mahazar are

clinchingly proved the case of the prosecution against the appellant. In this case, demand, acceptance and recovery have been clearly proved by the prosecution by way of evidences and material objects.

16. On a perusal of the records and the Judgment passed by the trial Court, this Court finds no sound ground and reason to set aside the Judgment of conviction and sentence dated 27.12.2018 in Spl. C.C. No. 01 of 2012, on the file of the Chief Judicial Magistrate Court and Special Court for Prevention of Corruption Act, Tuticorin and the same does not warrant any interference.

17. In the result, the Criminal Appeal stands dismissed, confirming the judgment of conviction and sentence, dated 27.12.2018 in Spl. Case No. 01 of 2012, on the file of the Chief Judicial Magistrate Court and Special Court for Prevention of Corruption Act, Tuticorin. The trial Court is directed to take effective steps to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

Ksa

To

1. The Chief Judicial Magistrate,
   Special Court for Prevention of Corruption Act,
   Tuticorin.

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

Copy To:

The Section Officer,Criminal Record Section,
Madurai Bench of Madras High Court,Madurai.(2 Copies)

+1 CC to M/s.T.S.VENGATESHAN, Advocate
(SR-42906[F] dated 25/01/2019)

Crl.A.(MD) No.558 of 2018
24.01.2019

ES/16.07.2019/8P/6C