



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.09.2019

Pronounced on : 09.12.2019

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.A(MD)No.234 of 2014

The Inspector of Police,
Vigilance and Anti Corruption Wing,
Tiruchirappalli.
[Crime No.12/2006]

... Appellant/Complainant

Vs.

R.Meena Rajasekaran

... Respondent/Accused No.1

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in Special Case No.61 of 2011, dated 30.08.2013, on the file of the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli and set aside the same.

For Appellant : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

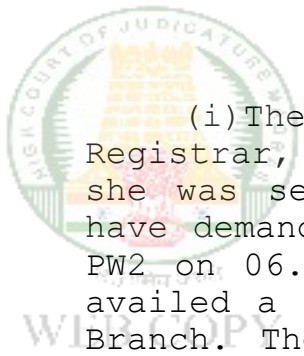
For Respondent : Mr.M.Subash Babu

JUDGMENT

The State preferred this appeal as against the order of acquittal passed by the trial Court, namely, the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli, in Spl. Case No.61 of 2011, dated 30.08.2013.

2.The respondent / first accused was charged before the trial Court for the offence under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988, along with another accused for the offence under Section 12 of Prevention of Corruption Act. During the trial, the second accused died and therefore, the charge as against him was abated. With regard to the respondent / first accused, the trial Court found her not guilty and by order dated 30.08.2013, acquitted her from the charges and as against the order of acquittal, the present appeal is filed.

3.The brief facts of the case, in a nutshell, are as follows:

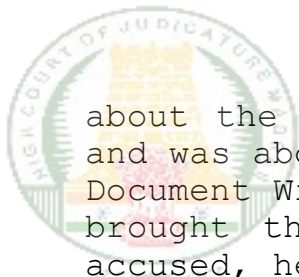


(i)The respondent / first accused was working as a Sub Registrar, Upuliyapuram, Trichy from 19.12.2005 to 07.09.2006. While she was serving as Sub Registrar at Upuliyapuram, she is said to have demanded a sum of Rs.900/- as a bribe from the complainant / PW2 on 06.09.2006 for registering a mortgage deed to him. PW2 has availed a tractor loan from the Merchantile Bank, Pavithram Pudhur Branch. The Branch Manager [PW9] gave him a model draft mortgage deed [Ex.P5] and suggested him to mortgage his agricultural land as a security for the tractor loan.

(ii)Accordingly, PW2 went to the office of the Sub Registrar, Upuliyapuram on 06.09.2006 along with the draft mortgage deed and approached the Sub Registrar / first accused for registering the same. The first accused told him that he has to pay a sum of Rs.1100/- as registration fee and another sum of Rs.900/- for her. When the complainant questioned why he has to pay a sum of Rs.900/- to her apart from the registration fee, the first accused added that it is for her and stated that without paying any money, the document would not be registered. Annoyed over the same, PW2 went to the office of the Vigilance and Anti Corruption, Trichy, on 07.09.2006 at 07.00 am and lodged the information under Ex.P2. The Inspector of Police, Mr.Pandithurai [PW12] recorded the same in Crime No.12 of 2006 [Ex.P12] u/s 7 of the Prevention of Corruption Act. Thereafter, he also made a request for official witnesses from the Department of Integrated Child Development Scheme, Trichy and from the Public Works Department (WRO), River Conservation Division, Trichy. Accordingly, PW3, Kannan, Junior Assistant in Integrated Child Development Scheme, Trichy and one Shunmuga Sundaram, Assistant in the Office of the Executive Engineer, Public Works Department (WRO), River Conservation Division, Trichy, were deputed.

(iii)The Inspector [PW12] introduced PW2 to the official witnesses and they also verified with PW2 and the complaint. Thereafter, PW12 demonstrated the Phenolphthalein test to PW2, PW3 and to the other official witness. He also received a sum of Rs.1100/- for the registration fee and a sum of Rs.900/- for the first accused, he quoted the same with phenolphthalein powder and, the serial numbers of the currency notes were noted in the entrustment mahazar Ex.P4.

(iv)PW2, PW12 and the official witnesses, namely, PW3 and another went to the office of the Sub Registrar, Upuliyapuram. PW12 remained outside and PWs2 & 3 went inside the office of the Sub Registrar on 07.09.2006 at about 05.15 pm and also met the first accused and requested her to register the document. She directed him to pay the registration fee of Rs.1100/- and also verified whether he is having a sum of Rs.900/- meant for her. After ascertaining the same, the first accused proceeded with the registration of the mortgage deed and PW8 and another person signed as a witness to the deed. After completion of the registration, the witnesses and others



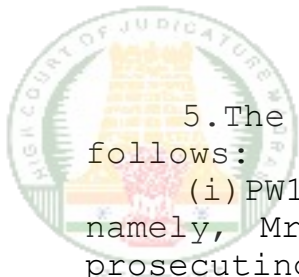
about the sum of Rs.900/- demanded by her. When PW2 took the same and was about to hand it over to her, she suggested him to bring the Document Writer, namely, Durairaj / second accused. Accordingly, PW2 brought the second accused and on the instructions of the first accused, he paid the bribe amount of Rs.900/- to the second accused. The second accused, in the presence of the first accused, received the amount and kept the same in his pocket. After handing over the tainted money, PW2 came out of the office and informed the TLO (PW12) with the pre-arranged signal.

(v) The TLO PW12 and other official witnesses ascertained what happened inside from PW2 and went inside the office. PW2 identified the accused persons to the TLO and the TLO recovered the mortgage deed and the receipt of payment of Rs.1100/- [Exs.P5 & P6], respectively, from PW2 and requested him to stay away and thereafter, conducted the phenolphthalein test at the right and left hand fingers of the second accused separately in two glass of sodium carbonate solution. The second accused dipped his right and left hand fingers separately in two glasses of sodium carbonate mixture and the solution turned Pink. PW12 recovered the same [MOs2 & 3 respectively]. PW12 has also recovered the tainted money of Rs.900/- [MO1 series] from the second accused and verified with the numbers of the currency with Ex.P4. He also recovered the shirt worn by the second accused [MO5] and the pocket portion of the shirt was subjected for phenolphthalein test and it also turned positive and the solution was collected in a separate bottle [MO4]. PW12 has also recovered a sum of Rs.10,620/- [MO6 series] from the second accused and a sum of Rs.610/- from the first accused and another sum of Rs.6600/- from the first accused, from which, the registration fee of Rs.1100/- [MO7 series] was recovered. The currency of Rs.1100/- recovered under MO7 series tallied with the currency in Ex.P4.

(vi) PW12 has also recovered the 'A' Register [Ex.D1], the Finger Print Register [Ex.P14] and Cash Receipt series [Ex.P15] and a sum of Rs.7965/- [MO8 series] from one Pichairathinam, Office Assistant, under a cover of mahazar Ex.P10. PW12 has also prepared the observation mahazar [Ex.P11] and a rough sketch [Ex.P16] and arrested the accused. He also conducted a search on the first accused's house and the search list is marked as Ex.P17.

(vii) PW13, namely, Mr.K.Ramachandran, the Inspector of Police, conducted the further investigation and made a requisition for chemical analysis of MOs 2 to 4, examined the witnesses and filed the final report as against this appellant under Sections 7, 13(2) & 13(1)(d) of the Prevention of Corruption Act and under Section 12 of the Prevention of Corruption Act as against the second accused.

4. On the side of the prosecution, as many as 13 witnesses were examined and 21 exhibits were marked and 8 material objects were produced.



5.The available evidence from the prosecution side are as follows:

(i)PW1 is the Inspector General of Registration, Chennai, namely, Mr.G.Muthusamy, who issued the sanction order [Ex.P1] for prosecuting the respondent / first accused.

(ii)PW2 is the complainant and he speaks about the demand as well as reiteration of demand made by the accused and receipt of money by the accused.

(iii)PW3 is the then Junior Assistant working in the Integrated Child Development Scheme III, Trichy, who accompanied PW2, as directed by PW12. He also speaks about the demand made by the accused officer in his presence for the registration fee as well as the bribe amount.

(iv)PW4 is the then Assistant, working in the Sub Registrar Office, Upuliyapuram, Trichy and he speaks about the receipt of Rs.1100/-, being the registration fee and the procedures followed in the office.

(v)PW5 is the Document Writer, one R.C.Sivasankaran, who prepared the mortgage deed [Ex.P5].

(vi)PW6 is the father of the complainant [PW2] and he speaks about the settlement deed executed by him in favour of his son [PW2] for availing the tractor loan.

(vii)PW7 and PW11 are the attestors to the mortgage deed [Ex.P5].

(viii)PW8 is another document writer, namely, R.Balasubramanian and he was examined as a hearsay witness.

(ix)PW9 is the then Bank Manager of Tamilnad Merchantile Bank, Pavitharam, Namakkal District and he speaks about the tractor loan availed by PW2 in his office and the draft mortgage deed given by him.

(x)PW10 is the then Office Assistant, Sub Registrar Office, Upuliyapuram and was examined as a hearsay witness.

(xi)PW12 is the investigation officer, who registered the complaint, laid the trap and conducted the search.

(xii)PW13 is the investigation officer, who conducted the further investigation and filed the final report.

6.After the prosecution witness was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. and the accused denied the same. Though he has stated that there are witnesses on his side, he has not examined any witness, but, has marked the 'A' Register as Ex.D1; the entries made in page no.78 of Ex.D1 as Ex.D2; and Form 95 as Ex.D3, through the prosecution witnesses, PWs 9 & 10, during their cross examination.

7.In conclusion of the trial, the trial Court has acquitted the respondent / accused that the prosecution has failed to prove the case beyond reasonable doubt. As against the same, the prosecution



has preferred the instant appeal.

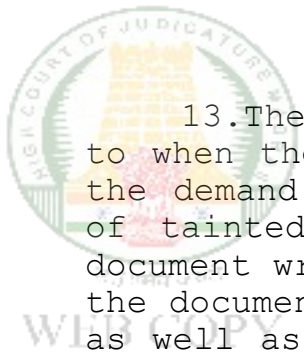
8.Heard Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the appellant / State and Mr.M.Subash Babu, learned Counsel appearing for the respondent / accused.

9.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the appellant / State, reiterating the facts of the case, submitted that the second accused has received the bribe amount, on the instructions of the first accused and therefore, the respondent / first accused is liable to be prosecuted as per Section 7 of the Prevention and Corruption Act. He further submitted that the document [Ex.P5] was drafted by PW5 and as such, the amount received by the second accused is not the charge for drafting.

10.The learned Additional Public Prosecutor further contended that the trial Court ought not to have disbelieved the evidence of the official witness, PW3 and his presence during the trap proceedings, when no motive was attributed as against him. According to the learned Additional Public Prosecutor, the learned trial Judge has magnified every minute details to throw a doubt on the entire case of the prosecution and in this regard, he has relied upon the decision of the Hon'ble Supreme Court reported in **(1984) 1 SCC 446**, in **State of Maharashtra v. Narsingrao Gangaram Pimple**.

11.Per contra, Mr.M.Subash Babu, learned Counsel for the respondent / accused placed his submissions sailing the order of the trial Court. According to the learned Counsel, the initial demand alleged to be made on 06.09.2006 at 12.30 pm was not corroborated by any other witnesses apart from PW2 and there is no investigation in this regard. Neither PW4, the Office Assistant in the Office of the Sub Registrar, nor the Document Writer [PW5] supported the case of the prosecution that there was a demand on 06.09.2006.

12.He would further submit that the case of the prosecution is that PW2 and the police party started from the Vigilance Office, reached the Sub Registrar Office at 05.00 pm and PWs 1 & 3 have stated in similar lines, whereas, the mortgage deed [Ex.P5] was registered in between 03.00 to 04.00 pm and after registration of the document [Ex.P5], five other registrations were also made in the Office of the Sub Registrar, Upuliyapuram and this would demolish the entire case of the prosecution. The Investigation Officer [PW13] has also admitted during the cross examination that the mortgage deed [Ex.P5] is registered as Document No.1506/06 and thereafter, the Documents bearing Nos.1507 & 1508/06 were registered in the Office of the Sub Registrar, Upuliyapuram, and therefore, according to him, after the arrest of the accused / officer, the possibility of the registration of subsequent documents would throw a strong doubt on the case of the prosecution.



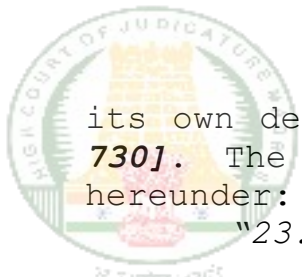
13. There are contradictions among the prosecution witnesses as to when the PW2 visited the Sub Registrar Office and at that time, the demand was made by the accused officer. Similarly, the receipt of tainted money is also by the second accused, who is also a document writer and he also stated that it is for the preparation of the document, the money was given to him. Therefore, both the demand as well as acceptance of the bribe amount has not been established in this case and the presumption cannot be drawn in this case. Moreover, the Analyst, who conducted the phenolphthalein test, has not been examined.

14. By relying upon the dictum laid down by the Hon'ble Supreme Court on an appeal against acquittal, he would contend that if two views are available, then the view in favour of the accused has to be given and the Court must be reluctant in interfering with the order of an acquittal. He further submitted that the Court must remember that the innocence of the accused is established before the trial Court and to establish a case as against the accused under the provisions of the Prevention of Corruption Act, the prosecution must establish i) demand; ii) reiteration of demand during trap proceedings and before tendering the amount; iii) acceptance; iv) recovery; and v) positive phenolphthalein test. As that of all criminal cases, the prosecution has to prove the case beyond any reasonable doubt, but, in this case, the prosecution has not established their case beyond any reasonable doubt and therefore, the trial Court has rightly acquitted the accused. In support of his contention, the learned Counsel has also relied upon the following judgments:

1. State of Kerala and Another Vs C.P.Rao, reported in (2011) 4 MLJ (Cr1) (SC).
2. B.Jeyaraj Vs. State of A.P, reported in (2014) 2 MLJ (Cr1) 358 (SC)
3. A.Kanagarajan Vs State through Inspector of Police (V & AC), Sivagangai, reported in (2015) 1 MLJ (Cr1) 567
4. Inspector of Police, V & AC, City Special Unit-I, Chennai, Vs S.Jacob reported in (2017) 4 MLJ (Cr1) 609
5. State represented by the Public Prosecutor, High Court of Madras Vs V.Srinivasan, reported in CDJ 2018 MHC 3613
6. Dashrath Singh Chauhan Vs Central Bureau of Investigation, reported in (2019) 1 MLJ (Cr1) 207 SC.

15. This Court has paid it's anxious consideration to the rival submissions and also the documents placed on record.

16. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, wherein the Hon'ble Supreme Court has followed



its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ...

... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

17. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring



mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

18.Keeping this in mind, this Court proceeded with the present case on hand.

1.Finding of the trial Court:

The evidence available on records would create doubts about the presence of PW3 during the trap proceedings and the evidence of PW2 and PW3 vary in respect of the material particulars during the trap proceedings and the evidence of PW3 cannot corroborate the evidence of PW2 in respect of reiteration and handing over of the tainted money and there is no evidence except the evidence of PW2 that the 2nd accused was brought before the 1st accused on the direction of the 1st accused and also the timing of the trap was also varied from the prosecution case.

Finding of this Court:

Both PW2 as well as PW3 have consistently stated that both went to the Office of the accused officer and she verified whether PW2 brought money meant for her and when PW2 was about to give the money to the accused officer, she suggested to bring the document writer (A2) who was outside the office. Along with A2, they again entered into the office and gave this bribe amount of Rs.900/- to A2 in the presence of the accused officer. The TLO [PW2] also admitted in his evidence that when the money was recovered from A2, he has admitted that he received that bribe amount on behalf of A1 (respondent) and therefore, the demand made by the respondent from PW2 is established through the evidence of PW2 and PW3.

2.Finding of the trial Court:

Who drafted the document, ie., either it was by PW5
<https://hcservices.ecourts.gov.in/hcservices/>



Sivasankaran or it was by the 2nd accused, Durairaj, is also doubtful.

Finding of this Court:

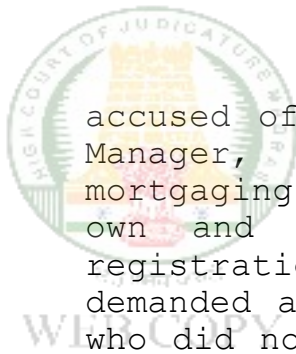
The mortgage deed is marked as Exp5 and the document speaks for itself that it was prepared by R.C.Sivasankaran, S/O. R.Chinnaiya, Uppiliyapuram and the document writer licence No.N.A.Y.R (T) 3988 of 84. Moreover, the mortgage deed [Exp5] is an usual document regularly registered for the purpose of mortgaging the property for obtaining bank loans and the bank Manager [PW9] has also stated that he gave the format of mortgage deed to PW2 along with loan application. It is with this draft deed PW2 approached the Sub Registrar, Uppiliyapuram (Respondent) on 06.09.2006. PW5 R.C.Sivasankaran, document writer has also admitted in his evidence that the mortgage deed Exp5 was prepared by the Banker and he only filled up the relevant portions and submitted the same for registration and for doing the same, he received a sum of Rs.50/- as his service charge, however, in his cross examination he has stated that he only signed in the document Exp5, which was prepared by A2 Durairaj. These mortgage documents are regularly used by the bankers and therefore, they will be having format, wherein necessary details have to be filled up depending upon the nature of property and it would be registered for collateral security purpose. If as it is claimed by the accused officer that the mortgage deed Exp5 was drafted by A2, then there is no necessity for the A2 a document writer to obtain the signature of PW5 as it is drafted by PW5. Though PW5 has stated so in the cross examination, he has clearly stated that he only filled the deed prepared by the Bankers and the signature of PW5 is found place in the mortgage deed Exp5. Therefore, this defence theory cannot be accepted. However, the trial Court without verifying the evidence in a proper manner has concluded as if there is doubt with regard to drafting of the document Exp5. The trial Court failed to consider if it was prepared by the document writer A2, there is no necessity for the document writer A2 to obtain signature of PW5 in the mortgage deed as if it was prepared by PW5.

3.Finding of the trial Court:

Though the tainted money was recovered from the 2nd accused, mere recovery of the tainted money from the 2nd accused when the demand and also the obtainment of bribe was not proved especially when the evidence of PW3 is unworthy to rely and also this evidence cannot be taken as a corroborative evidence to corroborate the evidence of PW2.

Finding of this Court:

The trial Court when it accepts the receipt of money by A2, ought to have considered the evidence of PW2 and PW3 with regard to the demand made by the accused officer from PW2. It is true there is no other evidence other than PW2 for the earlier demand made by the accused officer on 06.09.2006. On that day PW2 did not expect the



accused officer will demand any money and as directed by the Bank Manager, PW9 for availing tractor loan, for the purpose of mortgaging of title deed, he went to the Sub Registrar office on his own and verified with the Sub Registrar on the process of registration of mortgage deed. At that time the accused officer demanded a sum of Rs.900/-, other than the registration fees. PW2, who did not want to give the bribe money, lodged the complaint and there after, as arranged by TLO, he went to the Sub Registrar Office on 07.09.2006 along with PW3 and the accused officer has demanded the money again on 07.06.2009 in the presence of PW3. PW2 and PW3 have clearly stated about the demand reiterated by the accused officer on 07.06.2009 and there is no reason to disbelieve their evidence. It appears the evidence of PW2 is trustworthy. The corroboration is required when the evidence of witness is doubtful. In this case, there is no reason or any motive is attributed as against PW2 by the defence. The Hon'ble Supreme Court in **C.M.Sharma Vs State of Andhra Pradesh**, reported in **(2010) 15 SCC 1**, has held as follows:

"18. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law can not countenance such situation.

19. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record."

4. Finding of the trial Court:

When there is no corroboration for the evidence of PW2 and when there is no evidence by whom the document Ex.P5 was drafted in the evidence of PW2, the plea of the defense that the document was drafted by the 2nd accused and that he collected the said sum of Rs.900/- cannot be rejected out rightly and this Court felt that it is plausible and probable.

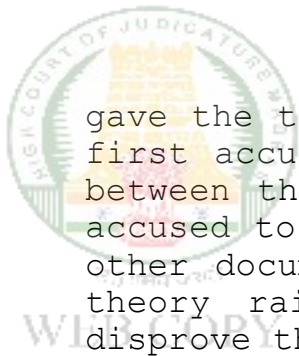


Finding of this Court:

The accused officer has admitted the receipt of amount of Rs.900/- by A2 and has taken the defence that it was only a drafting charge meant for A2 and it was recovered only from A2 and therefore, A1 cannot be made liable for the same. But, in this case PW2 has approached the accused officer on 06.09.2006 and the accused officer has demanded a sum of Rs.900/- from PW2. Apart from the registration charges and also reiterated that he cannot register the document without paying that amount and therefore, PW2 went to the appellant Police and lodged a complaint, based on the complaint a case in Crime No.12 of 2006 was registered and the TLO has also made a request to the Office of Integrated Child Development Scheme - II, Trichy and the Executive Engineer, PWD, Trichy for some staff for the purpose of trap. Accordingly, PW3 was deputed from the Office of the Integrated Child Development Scheme -II, Trichy and PW2 along with PW3 went to the office of the Sub Registrar, Uppiliyapuram on 07.09.2006 along with tainted money and those currencies have also been recorded in the entrustment mahazar [Exp4] and those currencies were recovered from A2, the document writer. Admittedly, A2 document writer has not signed the document Exp5. However, the tainted money of Rs.900/- was recovered from A2 and the phenolphthalein test conducted with the hands of A2 and shirt pocket of A2 proved the receipt of money by A2 and A2 in the presence of PW3 informed PW12 that he received the money for the Sub Registrar, Uppiliyapuram and the same has been stated by PW3 as well as PW12. Therefore, the prosecution has sufficiently established the demand as well as the acceptance of money in this case. However, the trial Court without considering the evidence in a proper perspective has passed an order of acquittal on flimsy grounds and the grounds taken by the trial Court are palpably wrong.

19. Apart from the grounds mentioned by the trial Court for acquitting the respondent from the charges framed against him, the learned Counsel for the respondent/accused officer has also taken few other grounds that the document was registered in between 3.00pm and 4.00pm and the witness have reached the office around 5.00pm and however, even after the registration of mortgage deed Exp5, few other documents have been registered on that day and if it is so, as claimed by the prosecution, after the receipt of money by the accused officer, trap was laid and the accused officer was also arrested. If so, the possibility of registration of few other documents does not arise.

20. The available evidence is the accused officer, after ascertaining the money brought for registering the document [Ex.P5] and after completion of the registration process, when the PW2 was about to hand over the tainted money, the accused officer insisted to bring the second accused and therefore, the PW2 and PW3 went outside the office in search of the second accused. After the



gave the tainted money to the second accused in the presence of the first accused and therefore, certainly there will be a time gap in between the registration of document Ex.P5 and bringing the second accused to the first accused and the possibility of registration of other documents in the meantime cannot be ruled out. This probable theory raised by the respondent/ accused is not sufficient to disprove the evidence of PW2 and PW3.

21.What is required for the offence under the Prevention of Corruption Act is that the demand, acceptance and recovery. The demand, acceptance and recovery have been sufficiently established by the prosecution in this case, but the trial Court failed to appreciate the available evidence and therefore, the findings of the trial Court cannot be sustained and it warrants interference.

22.The learned Counsel for the respondent by relying upon several judgments submitted that the trial Court has already passed an order of acquittal and therefore, this Court cannot apply the same ratio in appreciating the evidence and pass an order of conviction. When there are two views available, the view, which is in favour of the accused alone has to be considered.

23.As discussed above, there are no two views available in this case when the prosecution has established this case beyond any reasonable doubt and moreover, the Full Bench of the Hon'ble Apex Court in S.Dinesh Kumar vs State Tr.Inspector & Anr on 12 December, 2014 reported in (2015) 2 SCC 359, justified order of reversal passed by the High Court in an appeal against acquittal and the relevant portion of the same is extracted hereunder :

"5. The High Court after analyzing the evidence on record found that in the explanation given by the appellant (Exhibit P-9) immediately after the trap, nothing was suggested that the amount in question was received towards arrears of taxes. On the other hand the explanation offered was that the amount was forcibly thrust by the complainant. After going through the entirety of the matter, the High Court found the approach adopted by the Special Judge to be perverse and that the acquittal had resulted in miscarriage of justice. The High Court, therefore, convicted the appellant for the offence (a) under Section 7 of the Prevention of Corruption Act, 1988 sentencing him to undergo simple imprisonment for six months and to pay fine of Rs. 5,000/-, in default whereof to undergo further simple imprisonment for one month (b) and under Section 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988 sentencing him to undergo imprisonment for one year to pay fine of Rs.15,000/- and in default whereof to undergo simple imprisonment for 3 months. The acquittal of accused No.2 was affirmed.

7. Having heard the learned counsel and after having perused the entire material on record, we affirm the view of the High Court. We are conscious of the fact that in



an appeal against acquittal, if two views are possible and the court below has acquitted the accused, the appellate court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the person or possession of the accused having being firmly established, the immediate explanation offered by the appellant (namely Exhibit P-9) is absolutely crucial. Secondly, it is unimaginable that as against 50% of the arrears of taxes which the complainant was supposed to deposit, Rs. 1000/- only would be paid and accepted. The aspects of demand and acceptance having been established, in our assessment no two views are possible in the matter and the approach adopted by the Special Judge was perverse, justifying interference by the High Court."

24. The Hon'ble Supreme Court, in yet another case in **Nayankumar Shivappa Waghmare vs State of Maharashtra**, reported in **2015 (11) SCC 213** has held as follows:

" 14. The learned counsel for the appellant argued before us that since the trial court has acquitted the appellant giving him benefit of reasonable doubt, the High Court erred in law in convicting him as it is settled principle of law that where two views are possible, the finding of the trial court should not be disturbed.

15. The above argument advanced on behalf of the appellant, in the present case, is misconceived for the reason that if the same is accepted, there cannot be any case where appeal against acquittal can be allowed, and the error committed by the trial court can be corrected. The perusal of the impugned judgment shows that after discussing the evidence on record, the High Court has come to a definite conclusion that the trial court has erred in law in coming to the conclusion that the charge in respect of the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is not established. The High Court has clearly held that the trial court erred in law in giving benefit of reasonable doubt to the accused in the present case. After going through the evidence on record we are also of the opinion that it is not a case where two views are possible. As such, we do not find any illegality in the impugned order reversing the order of acquittal recorded by the trial court."

25. In **Niranjan Hemchandra Sashittal v. State of Maharashtra**, reported in **(2013) 4 SCC 642**, this Court has discussed the gravity of the corruption cases in the following words:

"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys



societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."

26.Considering the above ratio laid down by the Hon'ble Supreme Court and on analysing the evidence on record, this Court found that the demand and acceptance in this case has been established before the trial Court and it is not a case where two views are possible, but, the trial Court has erred in law in extending the benefit of doubt to the accused in this case.

27.In view of the aforesaid reasonings, this criminal appeal is allowed and the order of acquittal passed by the learned Special Judge, for trial of cases under Prevention of Corruption Act, Tiruchirappalli, in Special Case No.61 of 2011, dated 30.08.2013 is set aside. The respondent / accused is found guilty and convicted for the offence under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and she is directed to be present before this Court on 20.12.2019 for the purpose of questioning her on sentence.

Call on 20.12.2019.

SD/-
09.12.2019

As directed, when the matter was listed on 20.12.2019, the learned Counsel for the respondent / accused submitted that due to medical reasons, she could not appear before the Court and sought time for appearance till 03.01.2020. He has also filed an affidavit dated 18.12.2019 along with a copy of the medical records of the respondent. Therefore, this Court permitted the respondent / accused to appear before the Court on 03.01.2020.

2.Accordingly, the respondent / accused has appeared before this Court today. When she was questioned on the sentence, she pleaded innocence and prayed for lenient punishment.

3.The respondent / accused was not able to walk by herself and she was brought by her daughter and it appears, she is suffering with some ailments and she also produced her medical files. The learned Counsel for the respondent / accused has also filed an affidavit of the respondent dated 03.01.2020 that they are about to file an appeal before the Hon'ble Supreme Court and by relying upon Section 389(3) Cr.P.C., requested some time for surrender.



4.Considering the nature of offence and the condition of the respondent / accused, this Court imposes the sentence as follows:

The respondent is sentenced to undergo (i) one year rigorous imprisonment and to pay a fine of Rs.5,000/-(Rupees five thousand) and in default of payment of fine amount, to undergo simple imprisonment for a period of two months for the offence under Section 7 of the Prevention of Corruption Act and (ii) one year rigorous imprisonment and to pay a fine of Rs.5,000/-(Rupees five thousand) and in default of payment of fine amount, to undergo simple imprisonment for a period of two months for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The sentences are ordered to run concurrently and the period of imprisonment already undergone, if any, shall be set off under Section 428 Cr.P.C.

5.However, considering the physical condition of the respondent / accused and the affidavit filed by her that she is filing an appeal before the Hon'ble Supreme Court, this Court grants two months time from today to the respondent / accused to surrender before the trial Court. Upon expiry of the above said term, if no appeal is filed by the respondent and/or if no order was passed staying the order of conviction and sentence passed by this Court, the trial Court shall take necessary steps to secure the respondent / accused to undergo the punishment imposed upon her.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk/gk

To

- 1.The Judge,
Special Court for trial of Cases
under Prevention of Corruption Act,
Tiruchirappalli.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-301[F] dated 06/01/2020)

WEB COPY
+1 CC to M/s.M/S.M.SUBASH BABU, Advocate (SR-104294[F] dated
10/12/2019)

**Pre-delivery Judgment made in
Cr1.A(MD)No.234 of 2014
09.12.2019 & 03.01.2020**

AL(CO)
TR(10.01.2020) 16P 7C