Bail Slip

The appellant / Sole Accused namely Ramachandran, Male, aged 69, S/o Parthasarathy, was directed to be released on bail as per the order of this Court, dt.15/10/2014 in MP(MD)No.1/2014 in CRL A (MD)No.286/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.09.2019
PRONOUNCED ON : 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.286 of 2014

Ramachandran ... Appellant/ Accused No.1

Vs.

The State represented by
the Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.
[Crime No.7 of 1999]

... Respondent/complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment dated 17.09.2014 made in Special Case No.26 of 2011 on the file of the Special Court for PC Act Cases, Tiruchirappalli and set aside the conviction and sentence imposed against the appellant/accused and allow the appeal by acquitting the accused.

For Appellant : Mr.V.Kathirvelu,
Senior Counsel for
Mr.K.Prabhu

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

The appeal is arising out of the conviction and sentence imposed by the Special Court for trial of cases under the Prevention of Corruption Act, Tiruchirappalli in Special Case No.26 of 2011. By order dated 17.09.2014, the trial Court found the appellant guilty for the offence punishable under Section 7 of the Prevention of

Corruption Act, 1988 and convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month. The appellant was also found guilty for the offence punishable under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and convicted and sentenced to undergo two years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month and the above said sentences are ordered to run concurrently.

2.The case of the prosecution in brief is as follows:

(i) The defacto complainant [PW2] namely Ganesan is a resident of Sobanapuram village, Thuraiyur Taluk, Trichy District. The wife of the complainant and one Rukmani wife of one Selvaraj [PW3] were selected under the Indira Awaas Yojna Scheme Group Houses Scheme and the estimation of the house was Rs.32,000/-. The materials were provided to them from the Union Office and they started constructing the house. Rs.10,500/- was given to the beneficiaries as first installment on 10.10.1998. However, the second installment of Rs.9,045/- was not sanctioned to them for more than three months. Therefore, the complainant along with Selvaraj met Ramachandran [A1]/ project commissioner and enquired about the sanction of the next installment. Ramachandran [A1] demanded Rs.300/- from each and Gunasekaran [A2] Clerk, Sangurajan [A3] Accountant and a Clerk, each demanded Rs.100/- for placing the note before A1. Though PW2 and PW3 pleaded to pass the bill without payment of money, they refused to do so. Again on 17.03.1999 complainant along with PW3 went to the office of the accused officers and enquired about their bill. However, the accused officers stated that if they pay the demaned money, on that day itself, they will pass the bill. PW2 and PW3 also agreed for the same and returned. However, they were not willing to pay bribe.

(ii)Again on 23.03.1999, both PW2 and PW3 went to the Union Office and met the accused officers, they asked whether PW2 and PW3 had brought the money, for which, PW2 and PW3 replied that they could not mobilise the money and requested them to pass the bill and they will give the money after getting the cheque amount. The accused officers also agreed for the same and asked them to pay the money soon after the receipt of the cheque amount. Accordingly, sanction order was given to them and they produced the order to the Village President on 24.03.1999 and he issued cheque to PW2 and PW3 and they, encashed the same.

(iii) Since PW2 and PW3 were not willing to pay the money demanded by the accused and there is a possibility for the accused to trouble PW2 and PW3, they lodged a complaint [ExP2] before the Deputy Superintendent of Police, Vigilance and Anticorruption, Trichy, on 25.03.1999.

(iv)Based on the complaint, a case in Crime No.7 of 1999 was registered by the Inspector of Police [PW15]/Trap Laying Officer [TLO] and the First Information Report is marked as ExP21. TLO recorded the statement of PW2 and PW3. He collected the information secretly about the accused and obtained permission from his higher official for a trap.

(v) Based on the request of the TLO, one Jagadeesan Inspector from the office of the Assistant Director of Statistics, Trichy and Parasuram, Superintendent from the Office of the Deputy Commissioner of Labour, Trichy were deputed by the respective departments and they were present at 11.45am on 25.03.1999 in the Vigilance and Anticorruption Office at Trichy.

(vi) The TLO introduced PW2 and PW3, to the official witnesses, handed over a copy of the FIR and complaint to the official witnesses to read and understand the contents of the complaint. Thereafter, the TLO obtained Rs.1200/- [Rs.100 X 7 and Rs.50 X 10] [MO1 series] intended to be given to the accused and the TLO conducted a demonstration about the trap. The serial number of the currencies were noted down in the entrustment mahazar [ExP4]. The Police party coated the currencies with phenolphthalein powder and gave them to complainant [PW2]. The TLO instructed PW2 to meet the accused officers and if the accused officers demand the money, then only he should give the money to the accused officers. Selvaraj [PW3] was also directed to accompany PW2 and the TLO instructed them to show signal, after the accused received the money.

(vii)Accordingly, on 25.03.1999 around 4.00 pm, PW2 along with PW3 and PW4 went to the office of the accused officers. The TLO along with shadow witness Parasuram followed them secretly. They first met A1 and informed him that they had received the cheque amount yesterday and PW2 had brought Rs.600/-as demanded by A1 and first he handed over Rs.300/- to A1 and A1 received the money with his right hand, counted the same and kept it in his shirt pocket and thereafter, he gave another Rs.300/- as share of PW3 and A1 also received the same, counted and kept it in his shirt pocket.

(viii)Then they proceeded towards A2 Gunasekaran and as he was not available in his seat, they enquired A3, who said that he went to Trichy. As already A2 informed them, to give the money to A3, if he is not available, they gave Rs.600/- to A3 and asked him to give A2's share to A2, when he comes. Accordingly, A3 received the money counted and kept it in his shirt pocket. Thereafter, PW2 and PW3 came out and showed the pre-arranged signal to the TLO and informed him that the accused officers received the bribe money. Thereafter, the TLO along with his team went inside the room of A1 and PW2 and PW3 identified A1. Then the TLO introduced himself and his team A1 and thereafter, they went to the place of the Accountant, later his name was known as Sangurajan and the TLO introduced himself and his team to A3. Then A1's left hand fingers and right hand fingers were immersed in sodium carbonate solution and on immersion of his hands, the solutions turned into light pink and pink respectively and they were sealed as L1 and R1. On enquiry, A1 took out Rs.600/- [Rs.100 x 6] and the numbers of the currency tallied with the entries made in the entrustment mahazar and A1's shirt pocket was also subjected to sodium carbonate test and it turned into pink in colour and the said solution was sealed as P1 and on the collected solutions, the TLO and the official witnesses have attested.

(ix) Then A3's left and right hand fingers were immersed in two separate sodium carbonate solutions and both solutions turned into pink in colour and they were sealed as R2 and L2 and on enquiry, A2 took out Rs.600/- [Rs.100 X 1 & Rs.50 X 10] from his shirt pocket. The number of the currencies were tallied with the entries made in the entrustment mahazar. The shirt pocket of A3 was also subjected to sodium carbonate test and it also turned into pink in colour and the solution was sealed as P2 and attested by TLO, shadow witness and by the accused officer. Further, the TLO recovered several documents and files from the office of the accused. On 25.03.1999 at about 8.20pm, the accused were arrested. Thereafter, an observation mahazar [ExP.7], rough Sketch [ExP35] were prepared. With prior intimation the houses of the accused officers were searched and the reports are marked as Ex.P8 and ExP9. Thereafter, the accused were remanded to judicial custody.

(x) PW16 another Inspector of Police, took the case for investigation and recorded the statements of the witnesses.

(xi) PW17 is also an Inspector of Police, since PW16 was transferred, PW17 conducted the further investigation in this case and after completion of the investigation he filed a final report as against A1 to A3, for the offence under Sections 7 and 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 before the Special Court for trial of Cases under Prevention of Corruption Act, Tiruchirapppali and the same was taken on file in S.C.No.26 of 2011.

3.During trial On the side of the prosecution Seventeen witnesses were examined, Thirty Eight documents were marked and Nine material objects were produced.

4.The available prosecution evidence are as follows:

(i) PW1 is the then District Collector, Tiruchirappalli and he has accorded sanction [ExP1] for prosecuting the accused officers.

(ii) PW2 is the defacto complainant and he speaks about the demand made by the accused officers and lodging of complaint [ExP2] before the Vigilance and Anticorruption Wing, Tiruchirappalli, acceptance of the bribe money by the accused.

(iii)PW3 has also attested in the complaint as well he stood as a shadow witness and he speaks about the demand and acceptance of the money by the accused officers from PW2. However, he was treated as a hostile witness.

(iv)PW4 is the then Statistical Inspector at Trichy and he is also a shadow witness. He is a witness to the Entrustment mahazar [ExP4]. He speaks about the acceptance of bribe by the accused officers.

(v)PW5 is the Village President of the PW2's village and he has spoken about the issuance of cheque in favour of the wife of PW2 and PW3.

(vi)PW6 is the wife of PW3 and she has been treated as a hostile witness.

(vii) PW7 is a beneficiary under the Scheme and she has been treated as a hostile witness.

(viii) PW8 is the then Divisional Engineer and he has been treated as hostile witness.

(ix) PW9 is the then Supervisor at Uppiliyapuram Panchayat Union and he speaks about the procedure for constructing the house under the scheme.

(x) PW10 is the then Assistant Scientist and he speaks about the issuance of ExP20 and the presence of the phenolphthalein in the MOs.

(xi)PW11 is the Junior Assistant at Uppiliyapuram Panchayat Union Office and he came to know about the trap on 25.03.1999.

(xii) PW12 is the then Clerk in Panchayat Office at Sobanapuram.

(xiii)PW13 is the then Junior Assistant at Uppiliyapuram Panchayat Union and he deposed that he came to know the arrest of the appellant.

(xiv) PW14 was a Project Manager at Uppiliyapuram Panchayat Union and he speaks about the said scheme.

(xv)PW15 [TLO] is the then Inspector of Police in Vigilance and Anticorruption Division at Trichy. He speaks about the registration of the case in Crime No.7 of 1999 [ExP21], collecting the secret information, preparation of entrustment mahazar, laying of the trap, conducting phenolphthalein test and arrest of the appellant and recovery of tainted money from the appellant.

(xv) PW16 is the then Inspector of Police, who conducted investigation in this case initially.

(xvi) PW17 is the Inspector of Police, who has conducted further investigation in this case and filed a final report as against the accused including the appellant.

5.After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant and the same was denied as false. On the side of the appellant/accused one witness was examined and seven documents were marked.

6.The trial Court, after completion of the trial, found the appellant/ first accused guilty, convicted and sentenced as stated supra and acquitted the second and third accused from the charges levelled against them. As against the conviction and sentence imposed on the first accused, the appellant/ the first accused has preferred the present appeal.

7.Heard Mr.V.Kathirvelu, learned Senior Counsel appearing for Mr.K.Prabhu learned Counsel on record for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State.

8.The learned Senior Counsel appearing for the appellant has raised the following grounds:

i.The sanction order [ExP1] accorded by the PW1 in this case is defective and he has accorded sanction without application of mind.

ii.The prosecution has not established the demand on the date of complaint and on the date of alleged occurrence.

iii.The appellant being the Additional Block Development Officer, sanctioned and cleared the first installment of the loan amount without demanding any money from the complainant. Therefore, the allegation that the appellant demanded money for sanctioning second installment is impossible.

iv.The prosecution has failed to examine the real beneficiaries under the scheme and non examination of wife of PW2 creates suspicion and it is fatal to the case of the prosecution.

v.Before lodging the complaint and the alleged occurrence, the complainants have received the cheque and the amount in their favour. Therefore, there is no possibility for the appellant to demand.

vi.The amount cannot be presumed to have been handed over on the demand of the accused.

vii.The statement of the accused has not been recorded in this is case, which is violative as per Rule 47 of the Vigilance Manual.

viii.Mere recovery of the tainted money would not constitute an offence under the Prevention of Corruption Act. The learned Senior Counsel also relied on the following judgments.

a.P.Sathyanarayana Murthy Vs the District Inspector of Police, reported in [2015] 10 SCC 152;

b.Abdul Kathar Vs State, represented by the Inspector of Police, Vigilance and Anticorruption, Nagercoil, reported in [2019] 1 MLJ (Crl) 122;

c.T.M.Shanmughavelu and another, reported in [2011] 3 MLJ (Crl) 481.

d.S.D.Amalraj Vs State through Inspector of Police, reported in 2008 (1) TNLR 224 (Mad) (MB);

e.Parkas Vs State of Punjab, reported[CRA-S.No.1576 -SB of 2002, dated 21.08.2015 of Punjab-Haryana High Court]

9.Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the prosecution has proved the demand of illegal gratification, acceptance and recovery of the tainted money from the appellant in this case.

10.As regards the sanction, the investigation officer recorded the statement of the appellant and filed a final report before the Court along with the statement. The sanctioning authority in his evidence clearly deposed that he perused the materials and only after getting satisfied, he accorded sanction for prosecuting the appellant. Moreover, the Vigilance Manual is only directory in nature and it is not mandatory. Therefore, the ground that sanction is defective cannot be sustained.

11.The defacto complainant [PW2] and PW3 in the complaint clearly stated that the appellant/first accused demanded Rs.300/- each from them. Further, PW2 and the official witness [PW4] also deposed that during the trap the appellant/first accused officer demanded bribe amount for each PW2 and PW3. Therefore, the demand in this case is proved.

12. It is contended that the appellant had sanctioned the first installment without any demand, PW2 and PW3 obtained the cheque before lodging the complaint and therefore, there is no possibility for the appellant/first accused to demand money from them after completion of work. It is to be noted that the demand whether it is made for doing the work or for having done the work, it is an offence under the PC Act. The evidence of PW2 in this case shows that the appellant first demanded money for sanctioning the second installment, when PW2 informed the appellant that he would give the bribe amount, once the cheque amount is received by them and this term was agreed by the appellant. Therefore, in this case the appellant received the bribe amount as reward for having done the work.

13.The recovery in this case is also spoken by the complainant PW2 and the official witness PW4. Further the evidence of TLO also strengthens the evidence of PW2 and PW4. The recovery of the tainted money is also proved through ExP6 observation mahazar, wherein the official witness including the appellant/first accused attested.

14.The prosecution has proved the demand, acceptance and recovery of the tainted money in this case. Therefore, prays for dismissal of this appeal.

15.The learned Additional Public Prosecutor also relied on the following judgments:

1.Duraimurugan Vs State, reported in 2013 (1) CWC 136;
2.Mohinder Lal Bagai Vs Delhi Administration, reported 1970 CRI LJ 793;
3.V.S.MEtha and others, reported in 1970 CRI.L.J. 797;
4.State of M.P. and others Vs Ram Singh and others, reported in (2000) 5 SCC 88.

16.This Court has paid its anxious consideration to the rival submissions made on either side and perused the materials placed on record.

17.According to the prosecution, the appellant demanded a sum of Rs.300/- from PW2 and PW3 for sanctioning the installment of Rs.9,045/- under the Indira Awaas Yojna Scheme and the appellant was caught red handed in the trap.

18.Insofar as the ground that the sanction is defective and it was accorded without application of mind is concerned, the sanctioning authority in his evidence stated that he applied his mind and perused the materials placed on record and also after being satisfied that a *prima facie* case is made out and then accorded the sanction. In the sanction order [Ex.P1] itself, the sanctioning authority [PW1] has recorded about the subjective satisfaction for according the sanction. What is required for a sanctioning authority is a *prima facie* subjective satisfaction that an offence has been committed and he is not expected to conduct a detailed examination as to whether the offence is made out or not. Therefore, the sanction accorded by the sanctioning authority is valid in the eye of law.

19.With regard to the demand, the defacto complainant PW2 and PW3 in the complaint [ExP2] have clearly stated that on many occasions they requested the appellant to sanction the second installment amount, however, the appellant told them that only if they pay the bribe amount, he could pass the bill. This demand is mentioned in the FIR [ExP3] also. Therefore, the demand by the appellant is proved in this case through the evidence of PW2, PW3 and complaint[ExP1] and FIR [ExP3].

20.As far as the acceptance of money is concerned, the defacto complainant [PW2], PW3 and the official witness [PW4] have clearly stated in their evidence that the appellant had received the tainted money from PW2, counted with right hand and kept the same in his right pocket. The phenolphthalein test conducted on the hands of the appellant also proved positive. The Assistant Director, Forensic Science Lab, Chennai also deposed about the presence of the phenolphthalein in the solution, which were used for testing the hands of the appellant. The chemical analysis report also reveals the presence of the phenolphthalein in the MOs. Therefore, the prosecution has proved the acceptance of the tainted money by the appellant.

21.Insofar as the recovery of the tainted money is concerned, PW4 in his evidence deposed that on the enquiry made by the TLO [PW15], the appellant took the money from his shirt pocket and handed over and PW4 along with another official witness compared the serial number of the currencies with the entrustment mahazar [ExP4] and the same were tallied. Further, TLO [PW15] had also deposed that during the trap on enquiry, the appellant took out the tainted money from his pocket and gave it to him. Therefore, the recovery of the tainted money is also proved through his evidence corroborated by the official witness PW1.

22.A defence was raised that before lodging of the complaint and the trap, PW2 complainant and PW3 had received the cheque. Therefore, there is no possibility for the appellant to demand the bribe. Since the prosecution has proved the acceptance of money from PW2 and PW3 by the appellant, as stated by the learned Additional Public Prosecutor the amount was received by the appellant as a reward for having done the work. Even accepting the reward is also an offence punishable under the Prevention of Corruption Act.

23.The Delhi High Court in the decision reported in Mohinder Lal Bagai Vs Delhi Administration, reported in 1970 Crl.LJ 793 (vol.76, C.N. 196) has held that the reward or illegal gratification accepted either before are after doing the act would be covered by Section 161 IPC. A payment of a sum to a public servant, whether paid before or after the doing the official act, would constitute bribe within Section 161, IPC.

24.The corruption has ruined the system. Despite implementation of the Prevention of Corruption Act, corruption has not been eradicated and it has become a common affair. Nobody is having the sense of fear to the prevailing Act. The higher officials must act as an example to their subordinates in discharge of their duties. If the higher officials themselves commit mistakes, then they loose their morale to question their subordinates. Ultimately, the system fails. The Hon'ble Apex Court in *Niranjan Hemchandra Sashittal* v. *State of Maharashtra* reported in (2013) 4 SCC 642, painfully discussed the gravity of the corruption in the following terms:

> *"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."

25.This Court is of the view that the main ingredients of demand, acceptance and recovery of money is proved in this case by the prosecution. Therefore, this Court is not inclined to interfere with the judgment of the trial Court.

26.At this juncture, the learned Counsel for the appellant submitted that the appellant is now aged about 73 years and he is suffering from acute deviation of angle of mouth, slurred speech and memory loss and therefore, prayed that the sentence be modified for the offence under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act. In support of his claim, he also produced a copy of the medical files related to the appellant.

27.In the result, the appeal is partly allowed. The conviction imposed by the Special Court, for Trial of Cases under the Prevention of Corruption Act, Madurai in Spl.C.No.26 of 2011, dated 17.09.2014 is hereby confirmed. However, considering the request made on behalf of the appellant and his health condition, this court modifies the sentence from two years rigorous imprisonment to one year rigorous imprisonment for the offence under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and the rest of the judgment of the trial Court shall remain unaltered. The bail bonds if any executed by the appellant shall stand cancelled. The trial Court is directed to secure the appellant and confine him to prison, to undergo the remaining period of sentence.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

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

2.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Trichy,

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

4.The Record Keeper,
Criminal Section,
Madurai Bench of Madras,
Madurai.

+2 CC to M/s.K.PRABHU, Advocate (SR-106388[F] dated 20/12/2019)

judgment made in
Crl.A.(MD)No.286 of 2014
20.12.2019

SDS (17.06.2020) 11P-7C