



Bail Slip

The Revision Petitioner/Accused viz, A.Selvaraj, S/o.Antonyamy, Male Aged 51/14(Sole Accused) was released on bail vide Court order dated 17.10.2014 made in MP(MD).No.1/2014 in Crl.Appeal (MD).No.290/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 13.09.2019
PRONOUNCED ON : 13.12.2019
CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.A(MD)No.290 of 2014

A.Selvaraj ... Appellant
Vs.

The State represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Detachment,
Thanjavur(In Charge),
Nagapattinam,
Nagapattinam District. ... Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to allow the appeal and acquit the appellant by setting aside the judgment dated 22.09.2014 in S.C.No.103 of 2012 on the file of the Special Court for cases P.C. Act, Tiruchirappalli.

For Appellant : Mr.P.Ganapathi Subramanian
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 S.C.No.103 of 2012. By order dated 22.09.2014, the trial Court found the appellant guilty for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.1,500/- 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 Sections 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988, convicted and sentenced him to undergo two years rigorous imprisonment with a fine of Rs.1,500/- and in default of payment, to undergo simple imprisonment for one month and the above said sentences are ordered to run concurrently.



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

2.1. This appellant was working as a Town planning Inspector in Nagapattinam Municipality. The defacto complainant/P.W.2 is a Private Civil Construction Contractor, who applied for a building plan approval on behalf of P.W.8 / Safia. The application for building plan was submitted along with relevant documents on 21.07.2011 to the appellant / accused. The appellant / accused was the authority to process the said application, but he denied to process the same. Even after obtaining the approval from the competent authority, namely, the Commissioner of Municipality on 09.08.2011, he did not despatch the same to P.W.2, but demanded a sum of Rs.5,000/- from P.W.2 on 17.09.2011 and reiterated the demand on 19.09.2011. However, the appellant handed over the approval to P.W.2 with a direction to part with a sum of Rs.5,000/- for the same and also intimidated him that if he is not paying that amount, he may not get any further plan approval from the Municipality.

2.2. P.W.2, in turn, informed the house owner, viz., P.W.8 / Safia, but, she was not willing to part with any amount for the plan approval. P.W.2 informed the same over phone to the appellant / accused on 20.09.2011 at about 03.10 p.m and requested to reconsider the same, but the accused did not accept for the same and therefore, he pleaded to reduce the amount from Rs.5,000 to Rs.3,000/- which was agreed by the appellant. Since P.W.2 was not willing to part with the amount of Rs.3,000/- to the appellant/accused, he lodged a complaint before the Inspector of Police, Vigilance and Anti Corruption, Nagapattinam, [P.W.12] on 21.09.2011 at about 08.30 a.m.

2.3. On receipt of the complaint, P.W.12 has verified the complaint and registered the same in Crime No.10 of 2011, against the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and forwarded the FIR [Ex.P24] to the learned Judicial Magistrate, Nagapattinam. Thereafter, P.W.12 made a request to the Thasildar, Keelvelur and the Assistant Elementary Education Officer over phone to send some officials to stand as witnesses for the purpose of trapping. Pursuant to the same, one Balamurugan [P.W.3], Record Clerk, Assistant Elementary Education Office, Keelvelur and one Sivakumar, working in the Thasildar Office have appeared before the Trap Laying Officer [TLO] on 21.09.2011 around 10.45 a.m. The TLO introduced the complainant / P.W.2 to the official witnesses and also handed over the First Information Report / Ex.P24 to read and understand the contents of the complaint. They have also verified the details of the complaint from the complainant. Thereafter, the defacto complainant produced the amount, which was intended to pay to the appellant/accused to the TLO and the numbers of that currencies have been entered in the Entrustment Mahazar [Ex.P4]. The TLO had also conducted a Phenolphthalein test in the presence of the witnesses and their attestations were obtained. Thereafter, they proceeded to Nagapattinam Municipality Office around 12.00 noon and the



complainant / P.W.2 and P.W.3 were directed to enter into the office and other witnesses remained near the office waiting for the signal from PW2.

2.4. The accused officer was not available in the office when PW2 and PW3 entered and after sometime, the accused officer reached the office around 01.40 p.m. The accused officer in the presence of PW3 reiterated his demand for the sum of Rs.3,000/- and accordingly, P.W.2 gave that amount to the accused officer and he received the same and kept in his shirt pocket. Thereafter, the complainant [PW2] along with PW3 came out of the office and gave the pre-arranged signal. On seeing the signal, the TLO [PW12] and his party entered into the office around 01.50 p.m. The TLO requested for the presence of the Municipal Commissioner also. The Commissioner in-charge of Nagapattinam Municipality [PW6] has also responded and expressed his willingness to participate in the process. Thereafter, the Sodium Carbonate mixer was made ready through the Head constable Pandian and Phenolphthalein test was conducted by dipping the hands of the accused officer. The sodium carbonate solution turned into pink in colour and the same was collected in a bottle and sealed in the presence of the official witnesses, which is marked as MO2. The accused officer handed over the amount received from P.W.2 from his shirt pocket and the numbers found in those currencies were verified with the numbers mentioned in the Entrustment Mahazar and the same tallied. Thereafter, TLO prepared another mixer of Sodium Carbonate in another bottle and in that solution, the shirt pocket of the accused officer was immersed and it also turned into pink in colour. The same was collected in another bottle and sealed in the presence of the witnesses PW3 and PW6 and marked as MO3. The money recovered from the accused officer is marked as MO1. Thereafter, the TLO verified the application for building plan approval submitted on behalf of PW8 / Safia and the accused has also handed over the relevant files in file No.4406/2001, F1 dated 21.07.2011 and those documents have been marked as Ex.P.11. Thereafter TLO prepared a mahazar Ex.P6 and a rough sketch Ex.P25 in the presence of the P.W.3 and other official witnesses. He also arrested the accused officer and conducted a search in his house.

2.5. K.Manikavasagam, the Deputy Superintendent of Police, Vigilance and Anticorruption, Nagapattinam [P.W.13], proceeded with the investigation on 22.09.2011 and examined the witnesses including the TLO [PW12]. He also collected the call details of the mobile phone Numbers 9443589122 and 9942023582 of the accused officer and PW2 and also collected the chemical analysis Report [Ex.P21] from the Forensic Lab. The further investigation was conducted by PW14 - Thiru Ramasamy and he examined PW1, the sanctioning authority and the other witnesses and in conclusion of the investigation, filed the final report on 06.09.2012 as against this appellant for the offence punishable under Sections 7 of the Prevention of Corruption Act, 1988 and 13(2) r/w 13 (1) (d) of the Prevention of Corruption



3. During the trial, 14 witnesses were examined, 27 documents have been marked and four material objects were produced on the side of the prosecution.

4. The available witness from the prosecution side is as follows:

i) PW1 is the Commissioner of Nagapattinam Municipality, who accorded sanction for prosecuting the accused officer.

ii) PW2, Karthick, is the complainant and he speaks about the demand, reiterated demand and the receipt of the bribe amount by the accused officer.

iii) PW3, Balamurugan, is the then Record Clerk of Assistant Elementary Education Office, Keelvelur, who stood as a shadow witness.

iv) PW4, Karunanithi, is the then Junior Assistant in F1 Section of Nagapattinam Municipality, who processed the building plan and the documents pertaining to building plan, viz., Ex.P8 to Ex.P12, were marked through him.

v) PW5 is the then Junior Assistant in Nagapattinam Municipality, who speaks about the preparation of computer bill for building plan approval submitted by P.W.8 / Safia at the instructions of the accused officer.

vi) PW6, Thiru N.Chandrasekaran, is the then Commissioner of Nagapattinam Municipality (in-charge), and he speaks about the trap proceedings took place in his office.

vii) PW7, Thiru K.Sivakumar, is the Commissioner of Nagapattinam Municipality, who signed the building plan approval of PW8 / Safia on 09.08.2011.

viii) PW8, Tmt.Safia, is the house owner, for whom the application for building plan approval was made by PW2.

ix) PW9, Thiru S.Somasundaram, is a Contractor and also licensed Surveyor, who prepared the building plan Ex.P16.

x) PW10, Thiru R.Rajeswaran, is the then Divisional Engineer, BSNL, who furnished the call details of the accused officer and PW2.

xi) PW11 is the then Assistant Director, Forensic Lab, Chennai, who speaks about the chemical analysis report.

xii) PW12 is the then Inspector of Police, DVAC, Nagapattinam, who registered the case and laid the trap.

xiii) PW13, Thiru K.Manikavasagam, is the then Deputy Superintendent of Police, DVAC, Nagapattinam, who conducted the preliminary investigation.

xiv) PW14, Thiru R.Rangarasan, is the then Deputy Superintendent of Police, DVAC, who conducted further investigation and filed the final report.

5. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. However, he filed a detailed reply and also marked a document [Ex.D1] through PW6. In conclusion the trial Court found the appellant guilty, convicted



and sentenced the appellant as stated supra.

6. Heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, appearing for the respondent Police.

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7. The learned counsel appearing for the appellant has submitted that there was no demand in this case and the demand has not been proved beyond reasonable doubt. In support of his contention, he has made the following grounds:

7.1. The building plan (Ex.P16) was prepared for the house of the PW8. But, PW8, the owner of the house, denied that she gave any money to PW2 for the purpose of obtaining the building plan approval.

7.2. The building plan was prepared by PW9. According to PW8, she was not aware of PW9. In fact, PW2 / the complainant has worked under PW9 for more than nine years and PW9 has admitted that there was a motive prevailing between him and the appellant, since there was a delay in payment for a construction made by him to the Municipality on an earlier occasion. Therefore, PW9, with the help of PW2, has foisted this false complaint against this appellant.

7.3. The application for building plan was made on 21.07.2011 and the approval was duly accorded on 09.08.2011 and the same was also handed over to the complainant [PW2] on 09.08.2011 itself. This could be elicited from the evidence of PW8 that within one month from the date of application, she has received the plan approval. While so, there is no necessity for a demand, as alleged by the prosecution, on 17.09.2011, 19.09.2011 and on 20.11.2011, after a months' time after handing over the order of approval.

7.4. There is no corroborative evidence to substantiate that there was any demand on 17.09.2011 and there is no evidence that the plan approval was handed over to PW2 only on 19.09.2011.

7.5. The learned counsel appearing for the appellant has also highlighted the correction made in Ex.P1, where the receipt of the complaint has been over written. He would submit that according to PW3, the FIR was prepared at 11.30 a.m, whereas the case of the prosecution is that the complaint was lodged at 08.30 a.m and after registering the complaint, the official witnesses had entered at 10.30 a.m.

7.6. According to the prosecution, Exs.P5 & P6, viz., Recovery Mahazar and Rough Sketch, were prepared in the Nagapattinam Municipality Office. Though Ex.P6 is said to have been prepared after preparing Ex.P5, there is no seal found in Ex.P6, whereas, Ex.P5 is affixed with seal and signature. This discrepancy would establish that the document [Ex.P6] and other books were prepared in the office of the TLO [PW12] and the prosecution has not been proved



8. Per contra, the learned Additional Public Prosecutor appearing for the respondent police made his submissions as follows:

8.1. There was no animosity between the accused and PW9. PW9 has nothing to do with the plan approval submitted to the accused officer, except preparing the plan for approval, as he is a authorised / licensed Surveyor. The construction of building was entrusted by the House owner [PW8] to PW2 and the application was submitted by PW2 and therefore, PW9 is not having any role with the process of application for approval submitted by PW2.

8.2. He also pointed out that it is not the case of the prosecution that the bribe amount was given by the House owner [PW8]. PW8 has specifically stated in her evidence that when it was informed by PW2 that the accused officer is demanding Rs.5,000/- for approving the building plan, PW8 refused to part with the amount and by referring the same, PW2 pleaded to the accused officer. However, the accused officer did not accept the same, rather reduced the bribe amount from Rs.5,000/- to Rs.3,000/-, only then, PW2 lodged the complaint.

8.3. The accused officer has taken a specific plea in his statement filed, when he was questioned under Section 313 Cr.P.C., that the plan approval was handed over to PW2 on 09.08.2011 itself. The files pertaining to the plan approval was with the accused officer and it was not disputed and denied by him. Even though the accused officer has taken a plea that the plan approval was handed over to PW2 on 09.08.2011 itself, after obtaining signature, no such records are available and it was handed over by the accused officer only on 19.09.2011. The accused officer intimidated PW2 that if he is not paying the amount demanded by him, then he cannot get any plan approval in future.

8.4. The demand as well as reiteration of demand have been established by the prosecution, through the evidence of PWs.2 & 3. The bribe amount was also recovered from the accused officer, in the presence of the Commissioner (in-charge) of Nagapattinam Municipality [PW6] and the serial number of the recovered currencies tallied with the entrustment mahazar. The phenolphthalein test taken from the hands of the accused officer as well as from the shirt pocket of the accused officer [MO4] also established the receipt of money by the accused officer.

8.5. Though there is a correction in the FIR with regard to the time at which the complaint was lodged, the Trap Laying Officer [PW12] has specifically stated that the complainant approached him at 08.30 am and the FIR was prepared in between 08.30 am and 10.00 am. PW3 has also stated in his evidence that FIR was given to them and the contents of the complaint were read over and explained to them and therefore, this small correction with regard to the time is not a material defect and it would not affect the entire case of the



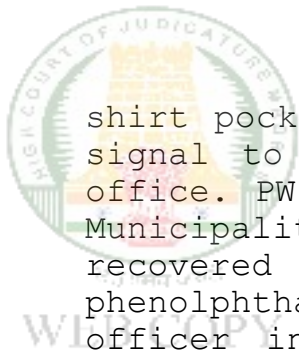
9. This Court paid it's anxious consideration to the rival submissions and also perused the documents available on record.

10. One Safia [PW8], House owner, engaged the Builder [PW2] to construct a house. PW2 prepared a plan for approval, through a licensed Surveyor [PW9] and submitted an application for approval of building plan to Nagapattinam Municipality on 21.07.2011. The appellant / accused officer was working as Town Planning Inspector in Nagapattinam Municipality from 02.09.2010 to 21.09.2011, who processed the plan submitted by PW2. The accused officer directed PW2 to pay the required fees and the same was paid by PW2 on 17.09.2011 at about 12.00 noon. When the complainant requested for approval order for his plan, the accused officer demanded a sum of Rs.5,000/- from PW2 to handover the order. PW2 was not having any money with him and therefore, he returned and thereafter, met the accused officer on 19.09.2011 at about 04.30 pm and requested to hand over the plan approval. The accused officer reiterated his demand and by promising that he would pay the demand later, PW2 obtained the plan approval on 19.09.2011.

11. While handing over the plan approval, the accused officer warned him that if he is not paying the amount as demanded by him, then PW2 could not obtain any plan approval from the Nagapattinam Municipality in future. PW2 informed PW8 about the demand made by the accused officer, but, PW8 refused to part with any amount. PW2 informed the same through his mobile phone to the accused officer and requested to waive the amount, but the accused officer reduced the same from Rs.5,000/- to Rs.3,000/-. Not willing to part with the amount, PW2 lodged the complaint before the respondent Police on 21.09.2011 at 08.30 am.

12. The Inspector of Police [PW12], Vigilance and Anticorruption, verified the contents of the complaint through his informants and registered the same in Crime No.10 of 2011 for the offence under Section 7 of the Prevention of Corruption Act and sent a copy of the FIR to the concerned Judicial Magistrate. He has also requested the Tahsildar, Keelvelur and the Assistant Elementary Educational Officer for deputing witnesses for the trap. Accordingly, PW3 and one Balamurugan were deputed. PW12 introduced the complainant to the official witness and they also verified the complaint and after preparing the entrustment mahazar and the demonstration of Phenolphthalein Test, they proceeded to the Nagapattinam Municipality and reached the office around 12.00 noon.

13. As per the arrangement, the complainant [PW2] and the official witness PW3 entered into the office. The accused officer was not available by that time in the office, but, he came to the office around 01.40 pm and reiterated the demand in the presence of the official witness [PW3]. The complainant gave a sum of Rs.3,000/-



shirt pocket. PW2 came out of the office and gave the pre-arranged signal to PW12 and thereafter, PW12 and others entered into the office. PW12 has also requested the Commissioner (in-charge) of the Municipality [PW6] to be a witness for the trap proceedings, recovered the money from the accused officer, conducted phenolphthalein test from the hands and shirt pocket of the accused officer in the presence of the witnesses. The Sodium Carbonate Solution turned into pink and they have been preserved in separate bottles and sealed in the presence of the witnesses. The files pertaining to the plan approval was also recovered from the accused officer.

14. PW2, in his evidence, has spoken about the demand made by the accused officer on 17.09.2011, 19.09.2011 and 20.09.2011. The House owner [PW8], in her evidence, has also stated that PW2 informed her that the accused officer has demanded a sum of Rs.5,000/- and she refused to part with the amount. PW2 was driven to lodge the complaint as against the accused officer on 21.09.2011 and as instructed by PW12, PW2 met the accused officer along with the official witness [PW3] on 21.09.2011 at about 01.40 pm, where the accused officer has reiterated the demand in the presence of PW3. Therefore, this Court is of the view that the prosecution has established the demand made by the accused officer.

15. The learned Counsel for the appellant has raised a ground that the plan approval was made ready as on 09.08.2011 itself and was also handed over to the complainant [PW2] on 09.08.2011 and therefore, there cannot be any demand on 17.09.2011, 19.09.2011 and 20.09.2011, as alleged by the prosecution. In fact, according to the learned Counsel for the appellant, this defence theory is supported by the House owner [PW8], who, in her evidence, has stated that within one month, she obtained the plan approval.

16. In fact, the Hon'ble Supreme Court in the decision reported in **1970 Cr1.LJ (vol.76, C.No.196)**, has held that the illegal gratification or reward accepted either before or 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 of the official act, would constitute bribe within Section 161 IPC.

17. Be that as it may, PW8 as well as PW2 have specifically stated that the accused officer has demanded a sum of Rs.5,000/- for handing over the plan approval. The accused officer was the concerned authority to deal with the files pertaining to the plan approval and the files were also recovered from him on the date of trap. PW2 in his evidence has admitted that the plan approval was handed over to him on 19.09.2011, but the accused officer gave a warning that if the money is not given to him, as demanded, then PW2 cannot get any plan approval from the Nagapattinam Municipality, in



18. The accused officer has also demanded money in the presence of the official witness [PW3] on 21.09.2011, after the issuance of the plan approval on 09.08.2011 and has also received the amount from PW2 and kept the same in his shirt pocket. The Phenolphthalein test, which was conducted in the presence of the official witness [PW3] and the Commissioner [PW6], on the hands of the accused officer and from the shirt pocket [MO4] established the receipt of money. The amount recovered from the accused officer was also tallied with the entrustment mahazar prepared in the office of the Trap Laying Officer, before the trap. Therefore, this Court is of the view that the prosecution has established the demand, receipt of money and recovery of tainted money beyond any reasonable doubt.

19. With regard to the motive ground raised by the appellant by referring to the evidence of PW9, this Court is of the view that the same cannot be given much importance, as PW9, a licensed Surveyor, has nothing to do with the construction of building, except prepared the plan for approval. That apart, the defence has not elicited any strong motive for the complainant [PW2] to foist a false complaint against the accused officer and the accused officer has also demanded money on 21.09.2011 in the presence of the official witness [PW3].

20. No doubt, there is a overwriting in the intimation made by the Inspector of Police [PW12] on the complaint [Ex.P2]. But, in Ex.P3 and in Ex.P24 [Printed FIR] itself, it is mentioned that the complaint was received on 21.09.2011 at 08.30 am and after verification of the complaint through sources, the same was registered only at 10.00 am. The Inspector of Police [PW12] / Trap Laying Officer, in his evidence, has also stated that PW2 came to his office at 08.30 am and lodged the complaint. However, he registered the same at about 10.00 am, after verifying the truth in the complaint, through his sources. While so, the overwriting with regard to the time at which the complaint was lodged, in submitting a report to the higher officials along with the complaint [Ex.P2], in the opinion of this Court, cannot be a material defect to disbelieve the entire case of the prosecution, when the prosecution has established the case, beyond any reasonable doubt, through the evidence of PWs.2, 3, 6, 8 & 9.

21. In view of the foregoing discussions and reasonings, this Court is of the considered opinion that there is no ground to interfere with the findings of the trial Court and accordingly, the conviction and sentence imposed by the learned Judge, Special Court for cases under the Prevention of Corruption Act, Tiruchirapalli, in S.C.No.103 of 2012, dated 22.09.2014, is confirmed. Bail bonds, if any executed, shall stand terminated. The trial Court is directed to secure the appellant and confine him to prison, so as to undergo the remaining period of sentence.



22. In the result, this criminal appeal is dismissed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

To

- 1.The Judge,
Special Court for cases under P.C. Act,
Tiruchirappalli.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Detachment,
Thanjavur(In Charge) Nagapattinam,
Nagapattinam District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to Mr.P.Ganapathi, Advocate Sr.No.105035

Crl.A(MD)No.290 of 2014

13.12.2019

SR (CO)

NR (06/01/2020) 10P : 7C