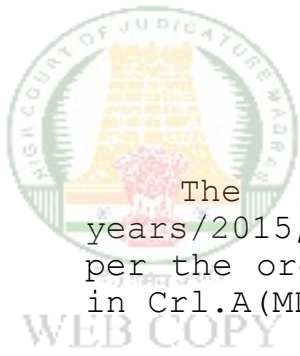




Bail Slip

The Appellant/Accused viz., P.Subburaj, aged about 58 years/2015, S/o.Perumalsamy, was directed to be released on bail as per the order of this Court dated 20.04.2015 in MP(MD)No.1 of 2015 in Crl.A(MD)No.112 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.112 of 2015

P.Subburaj

... Appellant/Accused

Vs.

State represented by,
The Inspector of Police,
Vigilance and Anti-Corruption,
Dindigul District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment passed in S.C.No.16 of 2014 dated 08.04.2015 on the file of the Court of Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.B.Saravanan

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

JUDGMENT

This appeal is arising out of conviction and sentence imposed by the Chief Judicial Magistrate, Dindigul, against the appellant in S.C.No.16 of 2014 dated 08.04.2015. The appellant / accused was tried for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and the Trial Court, in conclusion of the trial, found the appellant guilty of the offence for which he stood charged and judgment dated 08.04.2015, convicted and sentenced him to undergo two years imprisonment with a fine of Rs.2,000/-, in default, to undergo 2 months imprisonment, for the offence under Section 7 r/w 13(1)(d) of the Prevention of Corruption Act. As against the conviction and sentence, the present criminal appeal is filed.

2.The facts of the prosecution case, in brief, are as follows:

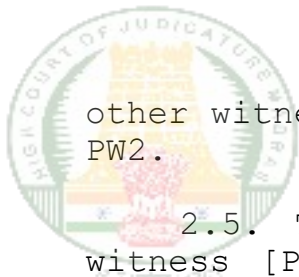


2.1. The defacto complainant, P.Ponmuniyandi [PW2], a Painter by profession, married one Arul Mary on 13.06.2008 as an inter-caste marriage. In order to obtain monetary assistance from the Government of Tamil Nadu for the inter-caste marriage, the defacto complainant [PW2] applied for a permanent Community Certificate, on 20.09.2009, along with all relevant documents before the appellant / Village Administrative Officer and the appellant / accused officer advised to meet him after Deepavali Festival. Thereafter, PW2 met the appellant / accused officer on 19.10.2009 and on the said date, the accused officer demanded a sum of Rs.1,000/- as bribe for issuing the community certificate. PW2, due to his ill health, could not meet the appellant for two months. Again, on 20.01.2010, he met the appellant and expressed his inability to make the demand of Rs.1000/-. Therefore, the appellant officer reduced the demand from Rs.1000/- to Rs.700/- and directed the complainant to meet him at his office on 25.01.2010 at 12.00 noon with Rs.700/-.

2.2. Since PW2 was not willing to pay the bribe amount, as claimed by the accused officer, he lodged a complaint [Ex.P3] before the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dindigul, on 25.01.2010 at 08.00 am. The complaint was endorsed to the Inspector of Police, Vigilance and Anti Corruption, Dindigul [PW11]. The Inspector of Police, after verifying the genuineness of the complaint, registered a case in Crime No.1 of 2010 under Section 7 of the Vigilance and Anti Corruption Act, 1988 on 25.01.2010 at about 09.00 am. The printed FIR is marked as Ex.P16.

2.3. On the same day, PW11 arranged for a trap. He made a request to the District Elementary Educational Officer, Dindigul and the Joint Director of Agriculture, Dindigul to depute the decoy witness for trap. Accordingly, one Thiru M.Karupiah [PW3], Junior Assistant in the Office of District Elementary Educational Officer and one Thiru Dhandapani, Assistant, Agriculture Department, Dindigul were deputed as official witnesses. The requisition letters made by the Trap Laying Officer and the endorsement made by the respective Departments were marked as Ex.P6 and Ex.P18, respectively.

2.4. The Trap Laying Officer [PW11] introduced the complainant [PW2] to the official witnesses and also handed over the First Information Report [Ex.P16], who 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 Trap Laying Officer and the numbers of the currencies have been entered in the Entrustment Mahazar [Ex.P5]. The TLO had also conducted a Phenolphthalein test in the presence of the witnesses and their attestations were obtained. Thereafter, they proceeded to office of the Village Administrative Officer, Michaelpalayam on 25.01.2010 at about 12.45 p.m and the complainant [PW2] and the official witnesses [PW3] were directed to enter into the office and



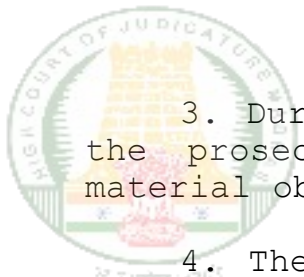
other witnesses remained near the office waiting for the signal from PW2.

2.5. The appellant officer, in the presence of the official witness [PW3], reiterated the demand and the complainant took out the money from his left side front pocket and handed it over to the appellant officer. The appellant received the money with his right hand, counted the money and then put it in the left side front pocket of his shirt. Thereafter, PW2 left the office and gave the pre-arranged signal and on seeing the same, the Vigilance and Anticorruption team, along with other official witness, went to the office of the accused officer.

2.6. On seeing the Vigilance team, the accused officer took out the money from his left side front pocket of his shirt and put it into his mouth. After proper advice given by the Trap Laying Officer [PW11], the Village Administrative Officer / the appellant took out the money and placed it on the table. The currency was with blood stains, due to blood seeping from the teeth-gums of the Village Administrative Officer. Thereafter, the Sodium Carbonate mixer was prepared and Phenolphthalein test was conducted by dipping both the hands of the accused officer. The sodium carbonate solutions turned into pink in colour and the same were collected in two bottles and sealed in the presence of the official witnesses, which are marked as MOs.2 & 3. The accused officer handed over the amount received from PW2 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, the 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 and marked as MO4. The shirt recovered from the accused is marked as MO5 and the money [Seven Hundred Rupees notes] recovered from the accused officer is marked as MO1.

2.7. Thereafter, the TLO verified the application for community certificate submitted by the complainant [PW2] and the appellant officer has also handed over the relevant files and his recommendation, which were marked as Ex.P2. Thereafter TLO prepared a recovery mahazar [Ex.P7], observation mahazar [Ex.P8] and a rough sketch [Ex.P9] in the presence of PW3 and other official witnesses. He also arrested the accused officer and conducted a search in his house. The Trap Recovery Officer [PW11] has, thereafter, altered the offence by including Sections 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act.

2.8. The further investigation was conducted by Thiru P.Sundararajan, Inspector of Police [PW12]. After obtaining sanction [Ex.P1] from the Revenue Divisional Officer, Dindigul [PW1], he examined the witnesses and filed the final report.



3. During the trial, 12 witnesses were examined on the side of the prosecution and 23 documents have been marked, besides 5 material objects.

4. The available evidence from the prosecution witness are as follows:

4.1. PW1 is the then Revenue Divisional Officer, Madurai, who sanctioned to prosecute the accused before the competent Court.

4.2. PW2 is the defacto complainant, who speaks about the demand of bribe, lodging of the complaint, reiterated demand and acceptance of bribe amount by the accused officer.

4.3. PW3 is the then Junior Assistant, District Elementary Educational Office, Dindigul, who accompanied PW2 for the trap proceedings. He was examined as the official witness and speaks about the entrustment mahazar, demand and acceptance of bribe by the accused officer and the phenolphthalein test.

4.4. PW4 is the then Village Assistant of Kottur Village, in whose presence, the arrest was made.

4.5. PW5 and PW6 are the Villagers, who have signed in the application of the complainant, as witnesses, for the genuineness of the community.

4.6. PW7 is the then Revenue Inspector, Nilakottai Firka, who speaks about the arrest and signed in the arrest memo.

4.7. PW8 is the then Deputy Collector / District Manager of TASMAG, who speaks about the issuance of community certificate to the complainant and furnished other documents for investigation.

4.8. PW9 is the then Head Clerk, who sent the bottles containing Sodium Carbonate Solution and Sealed Covers relating to this case to the Forensic Science Department, Chennai, on 27.01.2010.

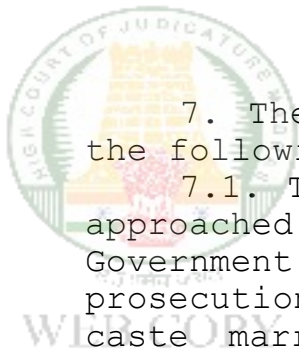
4.9. PW10 is the Scientific Assistant, who conducted the chemical analysis. The chemical analysis report is marked as Ex.P15.

4.10. PW11 is the Inspector of Police, who speaks about the receipt of the complaint, registration of FIR, trap proceedings and the arrest of the accused.

4.11. PW12 is the Inspector of Police, who conducted the 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. Though the accused has stated that there is evidence in support of his case, neither oral evidence nor documentary evidence was let-in on his side. On appreciation of oral and documentary evidence, the trial Court, in conclusion of the trial, found the accused guilty, convicted and sentenced him as stated above. As against the same, the appellant has moved the instant appeal.

6. Heard Mr.B.Saravanan, learned counsel appearing for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.



7. The learned counsel appearing for the appellant has raised the following grounds for the consideration of his case:

7.1. The case of the prosecution is that the complainant [PW2] approached the appellant to obtain a certificate so as to secure the Government Aid for inter-caste marriage. It is also the case of the prosecution that in order to apply for the Government Aid for inter-caste marriage, the complainant needed the permanent community certificate and therefore, he has approached the appellant. But the appellant is neither the authority to issue any certificate enabling the complainant to secure the Government Aid for inter-caste marriage nor the authority to issue any community certificate.

7.2. The preliminary investigation in this case was conducted by PW11 and the final investigation was conducted by PW12. Both the Officers are in the cadre of Inspectors of Police, who are not competent to investigate the case and the Officer in the cadre of Deputy Superintendent of Police alone can conduct investigation, as per Section 17 of the Prevention of Corruption Act.

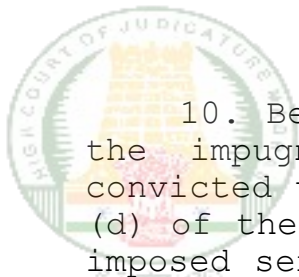
7.3. The prosecution has not proved beyond any reasonable doubt that an inter-caste marriage was in fact held on 13.06.2008 between the complainant and one Arul Mary. That apart, for the marriage said to have been held on 13.06.2008, the complainant attempted to secure the Government Aid for inter-caste marriage on 20.09.2009, after a period of one year.

7.4. The learned Counsel has also pointed out certain discrepancies / contradictions in the evidence of prosecution witnesses and prayed for interference.

7.5. Per contra, the learned Additional Public Prosecutor appearing for the respondent / State would submit that as per the proviso to Section 17 of the Prevention of Corruption Act, the Inspectors of Police, Vigilance and Anticorruption are authorised to investigate the cases. In this regard, he has also relied upon certain Government Orders enabling the Inspectors of Police to conduct the investigation.

8. The learned Additional Public Prosecutor would further submit that no doubt, the appellant / accused is not the authority to sanction the Government Aid for the inter-caste marriage, but, in order to secure the said Aid, one has to annex the community certificate, which can be issued, on the recommendations of the appellant, being the Village Administrative Officer. Since the prosecution has established the case beyond any reasonable doubt, the learned Additional Public Prosecutor prays for dismissal.

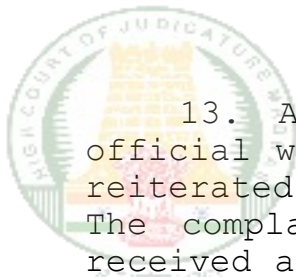
9. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.



10. Before venturing into the merits of the case, a perusal of the impugned judgment would show that the learned Judge has convicted the appellant under Section 7 and Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. But, the learned Judge has imposed sentence under Sections 7 r/w 13(1) (d) of the Prevention of Corruption Act alone. Though the appellant was convicted for the offence under Section 13(2) of the Prevention of Corruption Act, no punishment was awarded for the said offence. Similarly, though the accused has been convicted under Section 7 of the Prevention of Corruption Act, it is not known as to how the punishment is imposed under Sections 7 r/w 13(1) (d) of the Prevention of Corruption Act. Therefore, this Court, while admitting the criminal appeal, has called for a report from the learned Chief Judicial Magistrate, Dindigul. Accordingly, the learned Judge has submitted his remarks on 22.04.2015, which have been perused and accepted by this Court on 07.07.2015.

11. Now, coming to the merits of the case, as per the evidence of the complainant [PW2], he married one Arul Mary on 13.06.2008, as inter-caste marriage and in order to obtain the monetary assistance from the Government of Tamil Nadu, he applied for a permanent community certificate on 20.09.2009, before the appellant / Village Administrative Officer, along with the relevant documents, for which, the appellant asked the complainant to meet him after the Deepavali Festival. Accordingly, the complainant met the appellant / accused on 19.10.2009, on which date, the appellant demanded illegal gratification of a sum of Rs.1,000/- for issuing the community certificate. Due to ill health, the complainant [PW2] could not meet the Village Administrative Officer for about two months and again on 20.01.2010, the complainant [PW2] met the appellant and expressed his inability to meet the demand made by the appellant. Therefore, the appellant / accused reduced the demand amount from Rs.1,000/- to Rs.700/- and directed the complainant to meet him at his office on 25.01.2010 at about 12.00 noon with Rs.700/-. Since the complainant was not willing to pay the said amount, he lodged the complaint [Ex.P3] before the Deputy Superintendent of Police, Vigilance and Anticorruption, Dindigul, on 25.01.2010, at about 08.00 am.

12. The Inspector of Police [PW11], Vigilance and Anticorruption, verified the contents of the complaint through his informants and registered the same in Crime No.1 of 2010 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 District Elementary Educational Officer, Dindigul and the Joint Director, Agriculture Department, Dindigul, for deputing witnesses for the trap. Accordingly, PW3 and one Dhandapani were deputed. PW11 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 Office of the Village Administrative Officer at Muthaichalai, Palayam and reached the office around 12.45 pm.

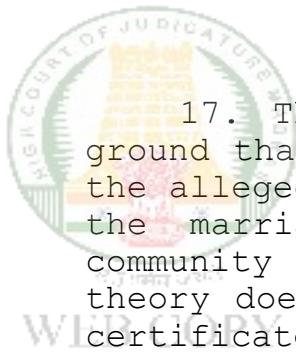


13. As per the arrangement, the complainant [PW2] and the official witness [PW3] entered into the office. The accused officer reiterated the demand in the presence of the official witness [PW3]. The complainant gave a sum of Rs.700/- and the accused officer received and kept the same in his shirt pocket. PW2 came out of the office and gave the pre-arranged signal to the Trap Laying Officer [PW11] and thereafter, PW11 and others entered into the office. On seeing the police party, the appellant / accused took out the tainted money from his shirt pocket and attempted to swallow the same. PW11 gave him advice and warning and then only, the appellant took out the tainted money from his mouth and placed it on the table. Due to blood seeping from the teeth gums of the appellant / accused, there were some bloodstains on the tainted money. PW11, thereafter, 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 community certificate was also recovered from the accused officer.

14. PW2, in his evidence, has specifically spoken about the demand made by the appellant / accused on 19.10.2009, 20.01.2010 and on 25.01.2010. The official witness [PW3] has also spoken about the demand and receipt of the tainted amount by the appellant / accused on 25.01.2010. In view of the evidence of the complainant [PW2] and the official witness [PW3], coupled with the phenolphthalein test results, this Court is of the view that the prosecution has established the demand made by the accused officer, the acceptance and recovery of the bribe amount from the accused officer, beyond any reasonable doubt.

15. The learned Counsel for the appellant / accused raised a ground that the appellant is neither the authority to sanction the Government Aid for the inter-caste marriage nor the authority to issue the community certificate, as such, the alleged demand made by him is not probable. As rightly pointed out by the learned Additional Public Prosecutor, no doubt, the appellant is not the authority to sanction the said Government Aid and the Social Welfare Department alone is the competent authority. But, one has to annex the community certificate for getting the Government Aid, which would be issued by the Tahsildar, based on the recommendations of the appellant, being the Village Administrative Officer, as such, this Court is not inclined to accede this ground.

16. In fact, the Hon'ble Supreme Court in **A.K.Syed Thane Vs State of Karnataka** reported in **2012 (4) MLJ (Crl) 263 (SC)** has held that whether the accused could or could not deliver the results becomes irrelevant, when the demand and acceptance of illegal gratification is proved.

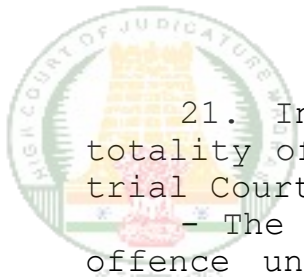


17. The learned Counsel for the appellant has also raised a ground that the prosecution has not made any enquiry with regard to the alleged inter-caste marriage and after a period of one year from the marriage, the complainant approached the appellant for a community certificate. This Court is of the view that this defence theory does not hold much water, for the reason that the community certificate is required for so many purposes and the prosecution, through the evidence of PW2, PW3, PW11 & PW12, has clearly proved that the complainant [PW2] approached the appellant / accused officer for a community certificate and has demanded the illegal gratification.

18. With regard to the jurisdiction ground raised by the appellant, it is submitted by the learned Additional Public Prosecutor that as per Section 17 of the Prevention of Corruption Act, the Deputy Superintendent of Police alone can conduct the investigation in this case. However, the proviso to Section 17 of the Act empowers a Police Officer not below the rank of the Inspector of Police to investigate into the offences under the Act, if he is authorised by the State Government in this behalf by general or special order.

19. The learned Additional Public Prosecutor by referring to the Government Order in G.O.Ms.No.269 of 1990 dated 04.06.1990 contended that the said Government Order is an amendment to the Notification made in S.R.O.No.366 of 1966, dated 10.01.1966. The Government Order in G.O.Ms.No.80, Public (Services-B) Department, dated 10.01.1966, which is the Notification referred to in the Government Order in G.O.Ms.No.269 of 1990 authorises all the Inspectors of Police of the Directorate of Vigilance and Anti Corruption, Madras to exercise the power of investigation and arrest mentioned in that proviso, only excluding the power of arrest without a warrant any Officer on the pay scale maximum of which is about Rs.700/- per month. By virtue of this Government Order, the power of arrest is also made available to the Inspector of police authorized to investigate only of an officer who does not belong to Groups A and B on the pay scale maximum of which is about Rs.1,950/- per month. Therefore, the ground raised by the appellant is also not acceptable.

20. Since all the grounds raised by the appellant / accused officer lack merits, this Court is not inclined to interfere with the order of the trial Court. However, the learned Counsel for the appellant, during the course of arguments, as an alternate plea, has submitted that the appellant has attained the age of 61 years and in view of the criminal case, disciplinary proceedings was initiated, which ended in dismissal from service. The appellant is having two daughters and his son has also met with an accident and his wife is also suffering from several illness. Since the appellant is the sole breadwinner of his family, the learned Counsel for the appellant sought for the indulgence of this Court.



21. In view of the aforesaid submission and considering the totality of the circumstances, this Court modifies the order of the trial Court as follows:

- The appellant / accused is found guilty and convicted for the offence under Sections 7 and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

- The appellant is directed to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a further period of one month, for the offence under Section 7 of the Prevention of Corruption Act.

- The appellant is directed to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a further period of one month, for the offence under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The sentences shall run concurrently.

22. In the result,

- the judgment of conviction and sentence passed by the learned Chief Judicial Magistrate, Dindigul, in S.C.No.16 of 2014, dated 08.04.2015, stands modified to the extent indicated supra;

- the trial Court is directed to take steps to secure the appellant / accused and confine him to prison, so as to undergo the remaining period of sentence; and

- bail bonds, if any, executed by the appellant / accused shall stand terminated.

In fine, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsg/gk

To

1.The Chief Judicial Magistrate,
Dindigul.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Dindigul District.



Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

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+1cc to Mr.B.Saravanan, Advocate, SR.No.95589.

Cr1.A(MD)No.112 of 2015
01.11.2019

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