BAIL SLIP

The Appellant/ Accused viz., S.Syed Bilal, S/o.Syed Ahamed was released on bail vide order of this Court dated 22/07/2015 made in MP(MD)No.1 of 2015 in Crl A(MD)No.158 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.158 of 2015

S.Syed Bilal ... Appellant/Accused No.1

Vs.

State Represented by
The Inspector of Police,
Village and Anticorruption,
Trichy,
[Crime No.25 of 2010] ...Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records in Special Case No.72 of 2012 relating to the judgment dated 22.06.2015 passed by the Special Court for Prevention of Corruption Cases, Trichy and set aside the conviction and sentence passed against the appellant/accused.

For Appellant : Mr.S.Syed Bilal

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

J U D G M E N T

The appeal is arising out of the conviction and sentence imposed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Spl.C.No.158 of 2012. By order dated 22.06.2015, the trial Court found the appellant/ accused No.1 guilty for the offence punishable under Sections 7 and 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.1000/- 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.1000/- and in default of payment to undergo simple imprisonment for one month and the above said sentences are ordered to run concurrently.

The trial Court acquitted the accused No.2 from the charges levelled against him.

2.As against the conviction and sentence, the appellant/ accused No.1 has filed the present appeal.

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

i. The defacto complainant/ M.Basheer Ahamed [PW2] resident of Valluvar Nagar, Trichy bifurcated his house for letting the eastern portion of the house for rent. On 03.09.2010 at about 2.00pm, PW2 submitted an application for getting a new Electricity Connection, to the appellant/ accused officer who was i/c Commercial Inspector at the Office of the Assistant Executive Engineer (O&M), TNEB, Sebattu, Trichy. On receipt of the application, the appellant told that he would inspect PW2's house on the next day.

ii. On 04.09.2010 at about 11.00am, the appellant inspected the house and asked PW2 to meet him in his office on 06.09.2010. Accordingly, PW2 met the appellant on 06.09.2010 at 12.00pm and handed over the fee of Rs.1,600/- and at the time, the appellant demanded Rs.1,000/- as bribe for himself and others for providing new electricity connection. When PW2 was hesitating for paying the bribe money, one S.Barnaboss, Foreman [Accused No.2], who was present there, instructed PW2 to pay the bribe amount as demanded by the appellant, for getting a new service connection.

iii. As PW2 was not willing to give bribe amount, he lodged a complaint [ExP2] before the Inspector of Police [PW11]/ Trap Laying Officer [TLO] Vigilance and Anticorruption, Trichy on 06.09.2010 at about 4.00pm.

iv.Based on the complaint a case in Crime No.25 of 2010 was registered against the accused officer for the offence under Section 7 of the Prevention of Corruption Act and the FIR is marked as ExP21. Then PW11 recorded the statement of the complainant. Based on his request M.Murugan, Deputy Manager (Dairy), Trichy District Co-Operative Milk Producers Union Ltd, Kottapattu, Trichy [PW3], and A.Elamurugan, Assistant, Office of the Deputy Director of Horticulture, Mannarpuram, Trichy appeared before him at 07.45am on 07.09.2010 to stand as shadow witnesses.

v.TLO introduced the shadow witnesses to PW2 and explained about the complaint given by PW2, to the official witness and handed over a copy of the complaint and FIR to understand the nature of the complaint. The TLO conducted a demonstration about the phenolphthalein test and about the trap. Thereafter, TLO obtained Rs.1,000/-[MO1 series Rs.500 X 2], which was intended to be given to the accused officer and the serial number of the currencies were noted in entrustment mahazar [ExP4]. PW2 and the Police party attested the same. The Police party coated the currencies with phenolphthalein powder and gave them to PW2. TLO instructed PW2 to meet the accused officer and if the accused officer demands the money, then only he should give the money to the accused officer. PW3 was also directed to accompany PW2 and TLO instructed them to show signal, after the accused officer received the money.

vi. Accordingly, on 07.09.2010, around 9.20am, PW2 along with PW3 went to the office of the accused officer and met him. At that time, the accused officer asked PW2 whether he had brought the money as demanded by him and PW2 replied that he had brought the money and gave the phenolphthalein coated money to the accused officer, who in turn, received it and kept the same in his shirt pocket. At that time the accused No.2 told him that he had asked him to give the money yesterday itself and to get the work completed. PW2 singed in the test register and obtained receipt for Rs.1,600/-. Thereafter, PW2 along with PW3 came out of the office and PW2 showed the pre-arranged signal.

vii. TLO enquired with PW2 as to what happened and PW2 explained the incident. TLO obtained the receipts from him. Thereafter, TLO along with his team proceeded to the place of accused officer, where the official witnesses identified the accused officer and TLO introduced himself to the accused officer. Two sodium carbonate solutions were prepared in two glass tumblers and fingers of both hands of the accused officer were immersed in them and on immersion, both solutions turned into pink in colour. The two solutions were sealed and recovered and marked as MO2 and MO3 respectively.

viii. When the accused officer was questioned about the receipt of the bribe money by TLO, the accused officer told him that he received the money, it is an offence and pleaded to pardon him. Then he took the tainted money from his shirt pocket and there was Rs.1,000/- [Rs.500 x 2]. The serial numbers of the recovered currencies tallied with the entries made in the entrustment mahazar. Subsequently, the shirt pocket of the accused officer was subjected to phenolphthalein test and the pocket turned in to pink in colour. The solution was preserved in a sealed bottle [MO4] and the shirt was marked as MO5. When the accused No.2 was questioned about he insisting upon PW2 to give the bribe money, he also pleaded to pardon him.

ix. Subsequently, TLO recovered the application [ExP5] submitted by PW2, receipts [ExP6 & ExP7]. The TLO prepared a recovery mahazar [ExP10], an observation mahazar [ExP11] and a rough sketch [ExP24]. Then TLO arrested accused Nos.1 and 2. Thereafter, the accused were remanded to judicial custody. TLO altered the offence to Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and placed the matter for further investigation before the Inspector of Police.

X.PW12 the Inspector of Police has taken the investigation in this case. He recorded the statements of the witnesses and obtained chemical analysis report [ExP20] and after completion of the investigation, he filed a final report as against the accused on 23.02.2012 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 Spl.S.C.No.72 of

2012.

4.During trial, On the side of the prosecution 12 witnesses were examined, 26 documents were marked as exhibits and 5 material objects were produced.

5.The available prosecution evidence are as follows:

(i)PW1 is the then Superintending Engineer, TANGEDCO, Trichy and he has accorded sanction [ExP1] for prosecuting the appellant.

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

(iii) PW3 is a shadow witness. He speaks about the demand and acceptance of the bribe money by the accused officer from PW2.

(iv) PW4 is the Junior Assistant at the Office of the Trichy Corporation, Ponmalai Division. He speaks about the handing over of files relating to Property Tax of PW2 [ExP12] to PW12.

(v) PW5 is the then Assistant Executive Engineer, TNEB, Sembattu, Trichy. He speaks about the procedure for giving a new electricity connection and the action taken on the application of PW2.

(vi) PW6 is working as a Mazdoor at the office of the Assistant Executive Engineer, Sembattu, Trichy. He speaks about knowing of the trap on 07.09.2010 around 12.30pm.

(vii) PW7 is the Assessor Grade II at the office of the Assistant Executive Engineer, Sembattu, Trichy and he came to know about the trap on 07.09.2010 at about 10.15am.

(viii) PW8 is the Electrical Work Contractor. He speaks about the work done by him in PW2's house and filling of application for getting a new electricity connection by him.

(ix) PW9 is a Mazdoor at TNEB, Sembattu. He has also spoken that he came to know about the trap laid by the Vigilance and Anticorruption Wing.

(x) PW10 is the Assistant Director at Forensic Lab, Chennai. She speaks about the presence of Phenolphthalein and sodium corbonate in the MOs and issuance of Chemical Analysis Report [ExP20].

(xi)PW11 is the Inspector of Police, Vigilance and Anticorruption Wing, Tiruchirappalli. He he speaks about the complaint lodged by PW2, registration of FIR, summoning of shadow witnesses, preparation of entrustment mahazar, the trap executed by him, conducting of phenolphthalein test, the preparation of observation mahazar, rough sketch, recovery mahazar and the arrest of the appellant.

(xii) PW12 is the Investigating Officer, who conducted the investigation and filed the final report in this case.

6.After completion of the prosecution side evidence, the incriminating circumstances were put before the accused under Section 313 CrPC and the same was denied as false. On the side of the appellant/accused No.1, ExD.1 was marked and on the side of the accused No.2 three witnesses were examined.

7.The trial Court, after completion of the trial and after hearing the arguments on either side, found the appellant/accused No.1 alone guilty, convicted and sentenced as stated supra. As against the conviction and sentence, the appellant has preferred the present appeal.

8.Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.

9.The learned Counsel for the appellant has raised the following grounds:

(i) There is a delay in registering the FIR as well as the FIR reaching the Court.

(ii) The explanation given by this appellant at the earliest point of time has not been produced before the Court.

(iii) PW1 the sanctioning authority has issued sanction order mechanically without application of mind.

(iv) When the trial Court acquitted the accused No.2, on the ground that he was not present at the place of occurrence, then the entire prosecution case is doubtful and therefore, the conviction and sentence based on the doubtful evidence cannot be sustained.

10.1.Per Contra, the learned Additional Public Prosecutor appearing for the State submitted that through the substantive evidence of PW2 / complainant, PW3/ shadow witness the prosecution has established the earlier demand and receipt of illegal gratification by the accused from the PW2 / complainant, for providing new electricity connection to the house of PW2.

10.2.PW3 the shadow witness clearly deposed that in his presence PW2 gave Rs.1,000/- to accused No.1 and accused No.2 insisted the complainant to give the bribe as demanded by accused No.1 and in his presence the bribe amount was recovered from accused No.1.

10.3.Apart from the evidence of PW2 and PW3, the Forensic Science Expert [PW10] deposed about the presence of phenolphthalein and sodium carbonate in the solutions analysed and issued ExP20 to that effect.

10.4.Therefore, the prosecution has established the demand, acceptance and recovery of bribe money in this case and the presumption under Section 20 of PC Act is drawn and there is no material produced by the accused to rebut the presumption.

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

12.With regard to the sanction, the sanctioning authority has stated that after going through the materials placed before him, by applying his mind to the materials placed on record and after being satisfied that a *prima facie* case is made out, accorded the sanction. In the sanction order [Ex.P1] itself, the sanctioning authority [PW1] has recorded about his 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.

13.Insofar as the ground that there is a delay in reporting the alleged demand is concerned, in the complaint it is stated that on 06.09.2010 around 11.00am, the appellant has demanded bribe and in the complaint, PW11, the Inspector of Police has recorded that he has received the complaint [ExP1] at 16.00 hours on 06.09.2010 and after conducting preliminary enquiry, registered the case at 18.00 hours on that day and on the next day 9.10am, the printed FIR has also reached the Court. So it cannot be stated that there is a delay in reporting the incident, registering FIR and the FIR reaching the Court. Therefore, this ground is not sustainable.

14.It is contended that when the trial Court has acquitted the second accused, the entire case of the prosecution is doubtful. It is to be noted, the second accused was given the benefit of doubt with regard to his presence at the time of alleged demand or at the time of receipt of the bribe by the first accused. The Second accused was not acquitted on merits, but only on the benefit of doubt. So, the entire prosecution case cannot be disbelieved.

15.Therefore, the prosecution has established the demand, acceptance and recovery of illegal gratification in this case.

16.Bribe givers only to ventilate their grievance, approach the vigilance officer after their prolonged suffering at the instance of the accused officer, which has been painfully observed by the Hon'ble Supreme Court in State of U.P.Vs.Dr.G.K.Ghosh [1984] 1 SCC 254 as follows:

> *"by and large a citizen is somewhat reluctant, rather than anxious, to complaint to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government Servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of the Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply*

with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government Officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the Court, he has to face he humiliation of being considered as a person who tried to falsely implicate a Government Servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-by to the rules, the official refuses to yield".

17.What is required for an offence under the Prevention of Corruption Act is that the demand, acceptance and recovery. In this case, the demand and acceptance were sufficiently proved by the prosecution and the tainted money as recorded in the entrustment mahazar [ExP10] was also recovered from the accused officer. The phenolphthalein test conducted on the both hands of the appellant/accused officer has also proved positive.

18.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."*

19.Since the prosecution has established their case, this Court is not inclined to interfere with the order of the trial Court. However, the learned Counsel for the appellant submitted that the appellant is the only bread winner of his family and pleaded for modification of the sentence. Considering the plea of the learned counsel for the appellant, this Court modifies the sentence from two years rigorous imprisonment to one year rigorous imprisonment. Accordingly, the criminal appeal is partly allowed. The conviction imposed on the appellant in Spl.C.No.72 of 2012, dated 22.06.2015 by the Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappallli is hereby confirmed, but the sentence alone is modified as stated above. The bail bonds if any 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 (CS I)

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Sub Assistant Registrar(CS)

dsk

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 (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai

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