

BAIL SLIP

Appellant/Sole Accused viz., Balasundaram, S/o.Chidambara sabapathy, was released on bail vide this court order dated 07.03.2015 in MP(MD).No.1 of 2015 in CRL A(MD)No.70 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A(MD)No.70 of 2015

Balasundaram : Appellant/Sole accused

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thanjavur. : Respondent

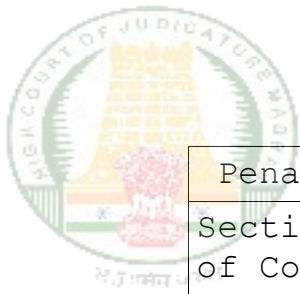
PRAYER : Criminal Appeal is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records of the judgment dated 18.02.2015 made in Spl.C.No.59 of 2014 on the file of the Chief Judicial Magistrate and Special Judge, Thanjavur at Kumbakonam and set aside the same by way of allowing the appeal.

For Appellant : Mr.P.Ganapathi Subramanian
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed as against the conviction and sentence imposed by the trial Court, namely, the Special Court-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam, in Spl.C.No.59 of 2014, dated 18.02.2015.

2.The appellant /Superintendent in Regulated Marketing Committee at Papanasam was charged for the offence under Section 7, 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988 and the trial Court, in conclusion of the trial found the appellant guilty, convicted and sentenced him as follows:



Penal Provision	Punishment
Section 7 of the Prevention of Corruption Act, 1988.	To under go Seven years Rigorous Imprisonment, and fine amount of Rs.2,000/- in default three months Simple Imprisonment.
Sections 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.	To under go 2 years Rigorous Imprisonment, and fine amount of Rs.2,000/- in default three months Simple Imprisonment.

3. Aggrieved over the same, the appellant preferred this Criminal Appeal.

4. The brief facts of the case as projected by the prosecution are as follows:

4.1. The appellant was working as Superintendent in the Regulated Marketing Committee at Papanasam, Tanjore District, from 16.04.2003 to 17.03.2005. He was a public servant as defined under Section 2(c) of the Prevention of Corruption Act. P.W.2, namely, Mohammed Farooq, is an Agriculturist, having 15 acres of land at Papanasam and also running a Rice Mill at Papanasam. The Government has provided a scheme for the Agriculturist to stock the paddy, at the time of harvest and to sell the same after sometime, so that, they get some benefits. The same can be stocked in the marketing godowns, without any rent and it can also be pledged with the marketing committee.

4.2. P.W.2 has stocked 174 paddy bags on 08.02.2005 belonging to his brother's wife, namely, B.B.Jhon (P.W.6) in the Regulated Marketing Committee at Papanasam and also applied for loan on the stocked paddy. The appellant/Superintendent of Marketing Committee demanded illegal gratification of Rs.870/- (at the rate of Rs.5 per bag) for arranging the advance loan amount on the stored paddy. He also disbursed the loan amount of Rs.26,000/- by way of a cheque in the name of Tmt.B.B.Jhon (P.W.6) on 04.03.2005.

4.3. P.W.2 again offered 76 bags of paddy to the Marketing Committee for stocking and also for pledging the same to avail the advance loan. At that time, the appellant/accused demanded a sum of Rs.1200/- (at the rate of Rs.5/- per bag) for keeping 250 (174+76) bags in the godown. P.W.2 did not pay the amount and therefore, the appellant demanded the said amount on 10.03.2005, 14.03.2005 and on 16.03.2005. He also insisted him to bring the amount on 17.03.2005



to his office. On 14.03.2005, the appellant went to P.W.2's Mill and demanded the said amount in the presence of others also. P.W.2 did not want to pay the money as demanded by the appellant. Therefore, he lodged a complaint before the Inspector of Police, Vigilance and Anti Corruption (P.W.12) on 17.03.2005 at about 10.00.am.

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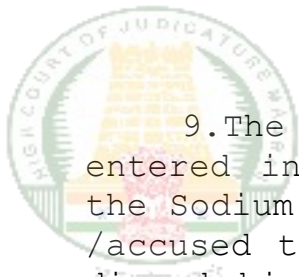
4.4. On receipt of the complaint, P.W.12 verified the truth in the complaint through his sources and confirmed the complaint. Thereafter, he registered a case in Crime No.4 of 2005, for the offence under Section 7 of the Prevention of Corruption Act and the First Information Report has been marked as Ex.P.20. He also informed the complaint to his higher officials and obtained permission for proceeding with the trap.

5. On the request made by the Trap Laying Officer (P.W.12), one R.Ilankannan, Junior Engineer (P.W..3) and one S.Anbumuthu were deputed as official witnesses to the trap proceedings. They reported the Trap Laying Officer (P.W.12) on 17.03.2005 at 12 noon and P.W.12 introduced P.W.2 to them. They have read out the First Information Report in Crime No. 4 of 2005, through witnesses and ascertained the complaint from P.W.2.

6. P.W.2 produced the bribe amount of Rs.1250/- (12- hundred rupees notes and a 50 rupees note) to the Trap Laying Officer in the presence of the witnesses and the numbers of that notes were recorded in the Entrustment Mahazar (Ex.P.3) and phenolphthalein powder was applied through a Constable (1616). The Trap Laying Officer also made other arrangements and demonstrated the phenolphthalein test to the witnesses through the Constable.

7. Thereafter, they proceeded to the marketing godown at 03.00.p.m and reached the godown around 04.00.p.m. P.W.2 and P.W.3 were instructed to go to the godown and other police party were hiding in a nearby place. P.W.2 and P.W.3 went to the godown at about 04.15.p.m and met the accused.

8. In the presence of decoy witness of P.W.3, the appellant / accused demanded money from P.W.2 and also collected the loan form. P.W.2 has questioned him for the delay in disbursement of loan amount and for which, the appellant /accused replied to pay the money first. Accordingly, P.W.2 took the tainted money of Rs.1,250/- from his pocket and handed it over to the appellant /accused. The appellant /accused counted the money of Rs.1,250/- in their presence and kept the same in his table drawer. Thereafter, P.W.2 and P.W.3 came out of the office and signaled to the Vigilance Team, as instructed to them.



9.The Trap Laying Officer [P.W.12] and other police officers entered into the office of the appellant/accused. P.W.12 prepared the Sodium Carbonate solution in two glasses and asked the appellant /accused to dip his fingers in the glasses. The appellant /accused dipped his both hands and the water turned to light Pink colour. P.W.12 collected those solutions in separate bottles and sealed the same in the presence of the official witnesses P.W.3 and Anbumuthu and also obtained their signatures and the same were marked as Ex.P.2 and Ex.P.3.

10.They have also recovered the tainted money from the accused in the presence of P.W.3 and the other official witness Anbumuthu. The tainted money recovered from the accused/officer were marked as M.O.1. In the presence of the official witnesses, the serial numbers of recovered notes were compared with the entries in the entrustment mahazar and verified. Both the witnesses have also confirmed that the numbers of the recovered notes and the numbers found in the entrustment mahazar are one and the same.

11.Thereafter, P.W.12 collected the ledgers with regard to the pledging of paddy bags by P.W.2 and the same were recovered and marked as Ex.P.4. An agreement bond /stamp paper was also recovered and marked as Ex.P.11. The receipt book for the deposited paddy deposit maintained in the Marketing Committee in Form-22 was recovered and marked as Ex.P.14. The deposit receipt of B.B.John was marked as Ex.P.21. He also recovered other connected records pertaining to the deposit of paddy and the loan availed by P.W.2 from the Marketing committee, Papanasam.

12. The tainted money recovered from the accused was marked as M.O.1. The Sodium Carbonate mixture were marked as M.Os. 2 and 3. The accused was arrested around 07.30.p.m and remanded to judicial custody. The Inspector of Police (P.W.12) prepared a rough sketch to the place occurrence (Ex.P.23) and also searched the house of the accused.

13.The investigation was taken over by the Inspector of Police, Ulaganathan (P.W.13) on 18.03.2005 and he examined the witnesses P.W.2 to P.W.4 and recorded their statement. He also examined the son and the wife of the accused and recorded their statement. He recorded the statement of other Officers from the Marketing Committee and obtained the sanction from Mr.Ganesan (P.W.1)/ Commissioner for Agricultural Marketing and Agricultural Business. The sanction order dated 29.03.2006, was marked as Ex.P.1. Thereafter, he filed the final report as against the accused.



14. During the trial 13 witnesses were examined and 26 Exhibits were marked. Three material objects were also produced.

15. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 of Cr.P.C and the accused denied the same. On his side, though he filed a separate statement along with his reply under Section 313 of Cr.P.C, no such statement is available in the files. However, the defence witness, namely, Nagarajan (D.W.1) was examined and through him, the documents Ex.D.1, marketing receipt and another receipt Ex.D.2 were marked.

16. In conclusion of the trial, the trial Court found that the appellant guilty, convicted and sentenced him as stated in paragraph No.2.

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

18. The learned counsel for the appellant submits that the accused/Officer never demanded any illegal gratification and the amount, which was given by P.W.2 on the date of occurrence, was only the fee payable for the load man for loading or un-loading the paddy bags in the godown. He would further submit that the complainant never visited the office of the accused. Though the prosecution has stated that the appellant /accused demanded money in the presence of two independent witnesses, namely, Pandian and Mahalingam, they have not been placed as witnesses and have not been examined.

19. According to learned counsel for the appellant, for loading/unloading the paddy bags, one has to pay Rs.5/- per bag to the load man. P.W.2 did not pay the amount for load man for the loading and un-loading of his paddy bags and hence, the appellant /accused insisted for the payments, for which, P.W.2 has foisted this false complaint as against the accused. He would further submit that the case of the defence is also supported by the evidence of D.W.1, namely, Nagarajan [load man]. D.W.1 is a licensed load man and he has specifically stated that they are entitled for a sum of Rs.5/- per bag for loading/un-loading the bags from the lorries to and keep the same in the godown and that amount was paid by P.W.2 to the appellant /accused.

20. The learned counsel also pointed out the contradictions between the prosecution evidence and would submit that the demand has not been established in this case. Moreover, the evidence of



D.W.1 was not discredited by the prosecution. Therefore, he prays for allowing this appeal.

21.Per contra, the learned Additional Public Prosecutor would submit that the case of the prosecution has been proved beyond reasonable doubt. The records recovered from the appellant /accused established that P.W.2, on behalf of his brother's wife (P.W.6), has pledged the paddy bags 174 and another 75 bags, which belongs to him in the marketing godown. Where the appellant /accused was working as a Superintendent. The appellant /accused had demanded a sum of Rs.5/- per bag as illegal gratification, by calculating 174 bags already deposited in the name of P.W.6 and 75 bags deposited in the name of P.W.2. He also went to the P.W.2's mill and demanded the same in the presence of independent witnesses, though the said independent witnesses were not examined during the trial.

22.Apart from Mahalingam, the prosecution has established the demand and the receipt made by the appellant/ accused and the receipt of money by the appellant /accused not only through P.W.2 also through the independent witnesses.

23.The learned Additional Public Prosecutor has also pointed out that P.W.1 is not a licensed load man during the relevant period and the documents Ex.D.1 and Ex.D2 were produced by D.W.1 are not license related to the relevant period. He further submitted that this is the belated defence taken by the accused and this defence was not taken at the earlier instance. It is also not corroborated by any other material, when the higher officials were examined. It is not also the responsibility of the appellant /accused to collect money from victims on behalf of the load man.

24.This Court has paid its best attention to the rival submissions and also perused the materials placed on record.

25.P.W.2 is a farmer and P.W.6 is P.W.2's brother's wife. Both are having 15 of acres agricultural land and have deposited their paddy in the marketing godown at Papanasam. The documents recovered and marked by the prosecution established that they have deposited 250 paddy bags in the marketing godown Papanasam. 174 paddy bags of P.W.6 were deposited by P.W.2 on 08.02.2005, remaining bags of 76 paddy bags were deposited on 04.03.2005. The first demand is said to have been for a sum of Rs.5/- per bag as an illegal gratification.

26.The appellant/accused made first demand on 08.02.2005 and the second demand was made on 17.02.2005 and the subsequent demands were made on 04.03.2005, 10.03.2005, 14.03.2005, 16.03.2005 and on 17.03.2005. Thereafter, P.W.2 lodged a complaint [Ex.P.2] before the



godown at Papanasam.

35. The documents Ex.D.1 to Ex.D3 produced by D.W.1 were not sufficient to prove that the accused was the Superintendent to the relevant period.

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36. The acceptance of money has also been established by the evidence of P.W.3 and P.W.7. P.W.3 is an independent witness/ Junior Engineer. The accused/officer demanded money in the presence of P.W.2 and P.W.3 and also received the same. P.W.7 is an Assistant, who was working in the office of the accused has also stated that on 17.03.2005 the appellant /accused received the money from P.W.2 and put the same in his table drawer. Therefore, the receipt of money is not disputed and tainted money is not disputed in this case.

37. Insofar as the demand is concerned, the demand made by the appellant /accused is established by the evidence of P.W.2 and by the relevant documents pertaining to the pledging of paddy bags in the marketing committee at Papanasam.

38. Pursuant to the demand, P.W.2 has also lodged a complaint (Ex.P.2) before the vigilance and Anti corruption on 17.03.2005 and based on which, a case was also registered in Crime No.4 of 2005 and apart from the same, the appellant /accused has also reiterated the demand on 17.03.2005 in the presence of P.W.3, when the P.W.2 has questioned the appellant /accused that for the sake of money, why he is delaying the loan amount, the appellant /accused has not denied the same. But, his reply is that 'its ok, you first give the money'. He also collected the money. The appellant /accused reiterated the demand made by him and same was also established through the evidence of P.W.3.

39. Accordingly, the prosecution has established the demand as well as the acceptance in this case. Once the demand and acceptance is proved by the prosecution, the presumption under Section 20 of the Prevention of Corruption Act 1980, has attracted the presumption as against the accused and therefore, there is no ground to interfere with the order of the trial Court.

40. However, the learned counsel for the appellant has prayed for modification of sentence by considering the appellant's health condition and he has produced the medical certificate of the appellant/officer.

41. The medical records produced by the appellant would reveal that the appellant underwent a cardiovascular surgery and now he is aged about 70 years.



42.Considering his age and ailments, the conviction and sentence under Section 13(1) (d) is modified from 2 years to 1 year. The sentence with regard to Section 7 of Prevention of Corruption Act is modified to 2 years. The trial Court is directed to secure the appellant /accused and confine him to prison, so as to undergo the remaining period of sentence. The period of sentence already under gone shall be set off under Section 428 Cr.P.C. Bail bond, if any executed, shall stand terminated.

43.In fine, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

1.The Chief Judicial Magistrate and Special Judge,
Thanjavur at Kumbakonam

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

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

4.The Section Officer,Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.P. GANAPATHI SUBRAMANIAN, Advocate (SR-100133[F] dated 21/11/2019)

CRL.A(MD)No.70 of 2015
20.11.2019

KM(CO)

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