BAIL SLIP

T.Thiagarajan, S/o. Thirugnanam, aged about 60 years, was directed to released on bail in MP(MD)No.1/2013, dated 25.06.2013 in CRL.A(MD)No.190 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.A(MD)No.190 of 2013

T.Thiagarajan : Appellant/Accused No.1

Vs.

The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thirucirapalli.
(Crime No.28 of 1999) : Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(ii) of Criminal Procedure Code, to set aside the order of the learned Special Judge, for Trial of Cases under Prevention of Corruption Act, Trichirappalli, made in Special Case No.11 of 2011 dated 27.05.2013, convicting the appellant herein for offences under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, allow the appeal and acquit the appellant herein, in accordance with law.

For Appellant : Mr.V.K.Vijaya Raghavan
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed to set aside the judgment of the learned Special Judge for Trial of Cases under Prevention of Corruption Act, Tiruchirappalli, made in Special Case No.11 of 2011, dated 27.05.2013.

2.The appellant herein is the first accused in Special Case in S.C.No.11 of 2011, on the file of the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, and he was convicted for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 [herein after referred to as "the Act"] and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, sentenced to under go simple imprisonment for one month and also convicted for an offence under Section 13(2) r/w 13(1) (d) of the Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, sentenced to under go simple imprisonment for three months. Both the sentences were ordered to run concurrently.

3. Initially, the appellant/ A1 and A2 were implicated in the above said offences, after the trial, A2 was acquitted and A1 was convicted as stated above. Aggrieved by the said conviction and sentence, the present appeal has been filed by the appellant/A1. No appeal is filed against the acquittal of A2 by the State.

4.The Brief facts of the case are as follows:

4.1.The appellant herein namely, Thiagarajan was working as Assistant in the Tamil Nadu Slum Clearance Board, (herein after referred to as 'the Board') Trichy, from 15.11.1994 to 28.12.1999 and the second accused namely, P.Suriyanathan, was working as Bill Collector in the same Board from 01.09.1997 to the date of filing the final report.

4.2. One Mohammed Kasim/P.W.5, who is the father of P.W.2 purchased a house site allotted to one Mohammeda Bibi/P.W.8, for a sum of Rs.15,000/- and agreed to pay the loan dues to the Tamil Nadu Slum Clearance Board. On 24.10.1997, the original allottee received a notice with instructions to receive the Patta, by remitting Rs.1,215/-. Thereafter, the said Mohammed Kasim/P.W.5 remitted Rs.1,215/- on 26.03.1998 and received a receipt in his name. The said receipt and notice were marked as Ex.P.9 and Ex.P.10.

4.3. Thereafter, on several occasions, Mohammed Kasim/P.W.5 approached the officials in the Board, Trichy, for issuance of Patta in his name. On 22.12.1999, at about 05.00.p.m., the defacto complainant/P.W.2, namely, E.M.Siddiq representing his ailing father Mohammed Kasim/P.W.5, met the appellant/first accused, who was seated below the name board “Kadhiya Meera - Estate Officer” and requested to issue the Patta and at that time, the appellant/first accused herein, in the presence of the 2nd accused, demanded a sum of Rs.500/- for himself and for the Bill Collector / 2nd accused as gratification other than the legal remuneration as a motive or reward for issuing allotment for the plot and after bargaining the appellant/first accused, reduced the demand amount of gratification to Rs.400/- and instructed P.W.2-defacto complainant to pay the same on the afternoon of 24.12.1999, in their office.

4.4. In the course of the same transaction and in furtherance of common intention, on 28.12.1999 about 12.30 p.m, at the office of the Board, Trichy, the appellant/first accused demanded Rs.400/-. Since P.W.2 was not inclined to pay bribe amount to the accused, he decided to lodge a complaint before P.W.14/Trap Laying Officer. Accordingly, he made a complaint (Ex.P.2) before the Inspector of Police, Vigilance and Anti Corruption Wing, Tiruchirapalli / P.W.14.

4.5.Thereafter, P.W.14 registered a case in Crime No.28 of 2009 (Ex.P.37) for the offences punishable under Section 7 of Prevention of Corruption Act, 1988.

4.6. Thereafter, P.W.14 arranged official witnesses, including P.K.Ramachandran/P.W.3, the then Junior Accountant, O/o the Regional Deputy Director, Khadi and Village Industries, Trichy and one Chandrasekaran. They came to the office of the Vigilance and Anti Corruption, Trichy and they were introduced by P.W.14 to P.W.2 and the P.W.2 was also introduced by P.W.14 to the said witnesses. They have also asked to peruse the contents of the complaint (Ex.P.2) and F.I.R (Ex.P.37) and also required to verify the correctness of the same with P.W.2. Thereafter, P.W.2 produced eight 50 rupee currency/M.O.1 series and the same was received by one Police Constable, viz., Kadhar Batcha as per the instruction of P.W.14. Thereafter, the same was handed over to the other witness/ Chanrasekaran, for counting the same and after that, as per the instructions of P.W.14, he dipped his hands into the sodium carbonate liquid and required him to observe that there was no change in the colour of the solution. Thereafter, as per the instructions of P.W.14, one Kamal Batcha coated phenolphthalein powder on the above said currencies and again, the said Chandrasekaran was required to count the same and after counting, he dipped his fingers in the said sodium carbonate liquid and it was observed that the solution turned into pink colour. The above said procedure was reduced into the Entrustment Mahazar by the Head Constable, namely, Muthukrishnan, as per the dictation of P.W.14 and the numbers thereon were noted in the said mahazar/Ex.P.4. P.W.2, P.W.3, the other official witnesses Chandrasekaran, Muthukrishnan and P.W.14 had signed in it. Thereafter, P.W.2 was instructed by P.W.14 to go and meet the accused and pay him, if he demanded the bribe amount and P.W.3 was also instructed to accompany with P.W.2 and watch over the happenings. P.W.2 was also instructed to fold his full hand shirt as signal for handing over of M.O.1 series with the accused. After completion of pre-trap proceedings, they went to the Office of the accused, but the appellant/first accused herein was not available in his seat. P.W.2 enquired the whereabouts of the appellant with nearby official, he informed that the appellant was on leave. Thereafter, P.W.2 and P.W.3 went out the office.

4.7.On 28.12.1999, at 08.45 a.m, P.W.2 again came to the vigilance Office and P.W.3 and other official witnesses also came there. Again, M.O.1 series were handed over to the police and again, phenolphthalein test was conducted and again another Entrustment Mahazar (Ex.P.8) was prepared by P.W.14. The contents of the same was dictated by P.W.14 and was reduced into writing by the Head Constable Karunanidhi. Again, P.W.2 and P.W.3 was instructed to meet the accused and P.W.2 was also instructed to hand over the money to the accused, if he demanded it and P.W.3 was instructed to watch over the happenings and P.W.2 was also instructed to give the pre-arranged signal after handing over of the said amount. Thereafter, they left the vigilance office, stopped the vehicle nearby central bus stand, P.W.2 and P.W.3 went inside the office of the appellant/first accused.

4.8.The appellant/first accused received Ex.P.6 (Printed Lease and Sale agreement) from P.W.2 and verified the correctness of signatures of his father and enquired P.W.2 as to whether they paid a sum of Rs.1,215/- as per the notice. P.W.2 handed over the receipt under Ex.P.5 and then he was required to take a Xerox copy of the same. They came out from the office, informed the same with P.W.14. They took the xerox copy of the same under Ex.P.9. Then, P.W.2 went inside the office along with P.W.3. The appellant/first accused asked P.W.2 as to whether he demanded of Rs.300/- or Rs.400/- and for that, P.W.2 said, it is Rs.400/-. Then, the appellant/first accused himself said, it is Rs.400/-, asked P.W.2 to give the said amount and P.W.2 handed over the tainted money (M.O.1 series), Ex.P.5, Ex.P.6, Ex.P.9 and Ex.P.10 to the appellant/first accused. The appellant/first accused received the said money through his right hand, after counting the same, he kept the same in his left hand side shirt pocket. Thereafter, P.W.2 requested the appellant/first accused to pay the share of the 2nd accused, otherwise, he would come to his house and give trouble to him with regard to his share, for which, the appellant/first accused informed him, if the 2nd accused asked about the money, P.W.2 was required to say that he only paid a sum of Rs.200/- and that he would pay a sum of Rs.100/- to the 2nd accused.

4.9.At the time of receiving M.O.1 series, the appellant/first accused was sitting in the seat below, bearing the name board of Kadhia Meera. Thereafter, P.W.2 and P.W.3 came out from the office. P.W.14 came there and enquired with P.W.2, ascertaining the happening inside the office and P.W.3 also confirmed the same. They went inside the office. P.W.2 identified the appellant/first accused, who was seated below the name board “Kadhia Meera”. P.W.3 also identified the appellant/first accused. The appellant/first accused told that his name is Thiyagarajan. P.W.2 came out of the office, as per the instructions of P.W.14. P.W.14 prepared sodium carbonate liquid in two glasses of water separately and asked the first accused to dip his fingers in it separately and while he dipped his fingers, it was observed that the solution turned pink colour. Then, P.W.14 collected the solution, in which the appellant/first accused dipped his left hand fingers in a bottle under the Vigilance and Anti Corruption seal and with the initial of P.W.3, the other official witness, the appellant/first accused and also with his signature with a mark of 'L' (M.O.3). He also collected the solutions, in which, the appellant/first accused dipped his right hand fingers under the seal of Vigilance and Anti Corruption and also with the initial of P.W.3, the other official witness and the appellant/first accused and also himself and marked as 'R' (M.O.4). Thereafter, P.W.14 recovered M.O.1 series from the appellant/first accused and when he was enquired by P.W.14, P.W.14 informed that the said money was received by him for the balance sale amount of Rs.405/- from P.W.2. Thereafter, the shirt worn by the appellant/first accused was handed over by the first accused to P.W.14 and the pocket portion was dipped into a separate sodium carbonate liquid and was observed that the solution turned into pink colour and the same was collected in a separate bottle with the seal of Vigilance and Anti Corruption and also with the initial of the accused, P.W.3 and other official witness and also P.W.14 with a mark 'S' under M.O.5. The shirt was marked as M.O.6. Thereafter, P.W.14 recovered seventy two 100 rupee currency notes from the appellant/first accused and since the same was said to have received as per the receipt book A.R.50601, the same was handed over to the Executive Engineer, who was available there. Thereafter, a sum of Rs.4,240/- was recovered from the appellant/first accused. Since he said that, it is his amount, the same was handed over to him. Further, a sum of Rs.392/- was also recovered from him. Since he said that it was his money, it was also handed over to him. Thereafter, P.W.14 prepared a seizure mahazar under Ex.P.13. P.W.14 also prepared observation mahazar under Ex.P.21. Thereafter, a search was conducted at the residence of the appellant/first accused and the search list under Ex.P.22 was also prepared. The advance intimation sent by P.W.14, for his house search is Ex.P.39.

4.10.P.W.14 also recovered Ex.P.24/leave letter of P.W.11 Kadhia Meera from 01.11.1999 to 26.12.1999, the joining report Ex.P.25, the leave letter (Ex.P.26) of the appellant/first accused for 24.12.1999 and 25.12.1999, temporary attendance sheets Ex.P.27. Thereafter, investigation was handed over to P.W.15, the then Deputy Superintendent of Police, Vigilance and Anti Corruption, Trichy. He conducted further investigation. After recording the evidences from officials, P.W.15 handed over the case to P.W.16, for further investigation.

4.11.P.W.16, namely, R.Govindarjan conducted further investigation and recorded the statement of P.W.1/Balaganga, Chairman of the Board and received the sanction order for prosecution/Ex.P.1 against the accused and after completion of investigation, he laid the charge sheet.

4.12.To substantiate the charges against the accused, the prosecution examined 16 witnesses as P.Ws.1 to 16 and marked 41 documents as Ex.P.1 to Ex.P.41 and produced 6 material objects as M.O.1 to M.O.6.

4.13.The incriminating evidence as against the accused from the evidence of the prosecution witnesses were brought to the notice of the accused as per Section 313(1) (b) Cr.P.C, and they denied the same as false. In order to disprove the case of prosecution, no oral evidence was let in, but Exs.D.1 to D.6 were marked.

4.14.Upon consideration of the evidence, the learned Special

Judge found that the demand of illegal bribe amount is proved by the evidence of P.W.2, P.W.3, P.W.5, P.W.8 and P.W.14 (Trap Laying Officer) and the acceptance was also proved through M.O.1 to M.O.6. After completing the trial, the learned Special Judge convicted the appellant/first accused for the offences punishable under Sections 7 and 13(2) r/w 13(1) (d) of Prevention and Corruption Act 1988, as above, and acquitted the second accused.

5.Aggrieved against the conviction and sentence, the appellant/A1 has preferred this Criminal Appeal.

6.Mr.V.K.Vijaya Raghavan, learned counsel appearing for the appellant contended that the court below ought to have considered that the appellant/first accused was the person authorised to receive the Bill Book from the Divisional Office and make collection from 01.09.1999 and that he was discharging his duty of collecting amounts due on 28.12.1999. Further, the court below failed to note the conduct of P.W.2 in securing Patta in favour of P.W.5, when the same was not possible, since the original allottee to the house was P.W.8. That apart, the court below ought not to have made a legal presumption under Section 20(1) of Prevention of Corruption Act and Section 114 of Indian Evidence Act against the appellant herein, when he rebutted the same by establishing the fact that there was due payable by P.W.2, towards the deficit sale consideration to the tune of Rs.405/- and P.W.2 handed over Rs.400/- to the appellant herein and when he asked the balance Rs.5/-, P.W.2 left the appellant's office to bring the change of Rs.5/-. The appellant has received only the payment from P.W.2 towards deficit sale consideration, but the court below has wrongly drawn presumption that the alleged amount of Rs.400/- as the bribe amount. Considering the clean and unblemished record of the appellant, he prays for setting aside the order of the trial court.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that P.W.2's father namely, Mohammed Kasim (P.W.5) purchased a house from P.W.8, who has originally purchased the said house by availing loan from the Board. Though as per the Board's proceedings, the property purchased by P.W.8, is not transferable one, the said transfer itself is illegal. Even on perusal of Notice, dated 24.10.1997 (Ex.P.10) issued by the Estate Officer, shows that it has been issued only to the original allottee (P.W.8) not to P.W.5. However, P.W.2's father has remitted only Rs.1,215/- through Ex.P.9 towards balance due not as land cost. Initially, P.W.2's father Mohammed Kasim (P.W.5) approached the Board for granting Patta. The Officer did not grant Patta in favour of P.W.5. Thereafter, P.W.2 met the appellant/first accused, who seated below the name board of one Kadhiya Meera - Estate Officer and requested to issue Patta. The appellant/A1 and A2 demanded Rs.500/- from the defacto complainant/P.W.2. P.W.2 was not inclined to pay the same, after bargaining, they reduced the same to Rs.400/-. Since the defacto complainant/P.W.2 is not inclined to pay the bribe amount, a complaint was lodged on the same day before P.W.14 (Trap Laying Officer) and on the same day, the case was registered and the trap proceedings were arranged. Since the appellant was not available in the office, again, the trap was re-scheduled on 28.12.1999 and on that day, the trap was conducted by P.W.14 and the appellant/first accused received the money from P.W.2 in the presence of P.W.3 and thereafter, he was caught red-handed and he was subjected to phenolphthalein test, which turned into positive. Thereafter, the accused were arrested. The appellant/first accused is not authorised for collecting amount as he is only an Assistant in the Office. After considering the entire materials, the trial court has rightly convicted the accused and therefore, the learned Additional Public Prosecutor prayed for dismissal of this appeal.

8. I have heard the learned counsel appearing for the parties and perused the materials available on record.

9.Upon careful re-assessment of the evidence and the judgment of the trial court and other materials on record and the submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:

(i) whether the appellant/first accused received Rs.400/- towards difference in land cost or not?

(ii) whether the trial Court was right in convicting the appellant/first accused guilty for the offences under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and the same warrants any interference?

10.The case of the prosecution revolves around the trap witnesses viz., P.W.2, P.W.3 shadow witness, P.W.5/father of P.W.2, P.W.8 owner of the Plot No.138 and P.W.14 (Trap Laying Officer). In the present case, P.W.8 is the original allottee of Plot No.138, measuring an extent of 27 square meters, which is also admitted by the prosecution as well as the defence. P.W.5/father of P.W.2 purchased the property in the year 1997 through Ex.P.11. After purchase of the property, he paid the dues to the Board in the name of P.W.8, by way of Ex.P.9. Further, a perusal of P.W.2's evidence reveals that P.W.5 authorized his son viz., P.W.2/defacto complainant to approach the Slum Clearance Board on behalf of him for getting Patta. Initially, P.W.2 went to the Board and met the appellant/first accused in the presence of the second accused and enquired about the grant of Patta in favour of his father, under the impression that he is 'Kadhiya Meera', however, without knowing his original name as Thiyagarajan, since the appellant/first accused seated below the name board 'Kadhiya Meera'. In order to prove the fact, the prosecution examined said Kadhiya Meera as P.W.11. After bargaining the appellant/first accused, reduced his demand from Rs.500/- to Rs.400/-. Thereafter, P.W.2 made a complaint before P.W.14 (Trap Laying Officer). On 28.12.1999, about 12.45 p.m., P.W.2 and P.W.3 went to the office of the appellant. Thereafter, P.W.2 handed over the documents to the appellant/first accused and the appellant/first accused enquired whether he has paid the difference cost of Rs.1,215/- and thereafter, P.W.2 produced receipt/Ex.P.9 to him. After verifying the same, the appellant/first accused directed P.W.2 to take xerox copy of the said document. Thereafter, P.W.2 took a copy of the same and handed over the same to the appellant/first accused and thereafter, collected the entire documents including Ex.P.11 sale deed. Thereafter, the appellant/first accused demanded Rs.400/- and he collected eight 50 rupees currency notes from P.W.2/defacto complainant and counted the said amount by using his right hand and put it in his shirt pocket and P.W.3 also confirmed the same. Thereafter, they came from the office and gave a pre-arranged signal to P.W.14 (Trap Laying Officer). Immediately, the trap laying officer conducted the trap proceedings. The evidence of P.W.2 and P.W.3 are cogent and corroborated with each other. Hence, I do not find any difference between the evidences of P.W.2 and P.W.3.

11.Further, this Court has to consider whether the accused was authorized to collect the difference of land cost. In the present case, the appellant/A1 was working as Assistant and A2 was Bill Collector. On a perusal of Ex.P.11, it is seen that Estate officer sent a notice to the original land owner calling upon to pay the difference land cost of Rs.1,215/-. Thereafter, P.W.2's father/P.W.5 paid the said amount as per the notice. A perusal of Ex.P.9 (Xerox copy of the receipt), it is seen that the Estate Officer and the Bill Collector and P.W.2's father signatures are available. However, the appellant/first accused signature is not available in Ex.P.9. On perusal of the same, it is clear that the appellant/first accused is not authorized to collect the amount from the general public. It is only to be done by A2. Though initially A2 was implicated in the above said offence, the trial court acquitted the second accused on the ground that there was no demand and acceptance of the bribe amount by A2. No appeal was preferred against the order of acquittal of A2 by the State. Further, the defence evidence established that the land cost collected on earlier occasion is Rs.1,215/- by way of Ex.P.9, and as per the G.O.18, dated 12.01.1995, difference cost has to be paid by the original allottee. On perusal of Ex.D.1, which is a letter sent by the Executive Engineer with regard to the payment of additional cost, dated 12.01.2000 by way of reply, the Executive Engineer stated that in respect of Plot No.138, "B Block, Quid-e.Millath Nagar, Thillai Nagar, Trichy, to be paid as on date of Rs.405/-, as if the defence witness projected that balance cost of Rs.405/- has to be paid by the original allottee in which, he collected the amount.

12. It is seen that none of the documents were produced before the trap proceedings. Hence the documents are not useful and it is only an afterthought. It is also relevant to note that as per the Board's proceedings, the land allotted in favour of P.W.8, cannot

be transferred to third party. Even the acceptance of sale amount from Mohammed Kasim(P.W.5) in the name of P.W.8, is unsustainable one. Though Ex.P.10/notice was issued in favour of original allottee/P.W.8, the amount was collected by the Estate Officer from Mohammed Kasim (P.W.5).

13.In the present case, the appellant has not issued any notice for collecting the amount from P.W.2, either by original owner or by the subsequent purchaser and none of the documents were produced or issued to show that he was authorized to collect amount from P.W.2. However, no record produced before this court that in the absence of Estate Officer, the appellant/first accused was authorized to function on behalf of the Estate Officer.

14.In view of the above, in the present case, the prosecution has proved, its case by adducing sufficient materials that the appellant/first accused demanded and accepted bribe amount from the defacto complainant(P.W.2), for change of Patta in favour of subsequent purchaser, namely, P.W.5. Therefore, the trial court has rightly held that the prosecution has proved the case beyond reasonable doubt that the appellant /first accused was guilty of the offence.

15.Having gone through the judgment of the trial Court and careful consideration of the evidences of P.W.2, P.W.5, P.W.8 and P.W.14 and other relevant materials, this Court finds that the conviction and sentence imposed by the trial court, is liable to be confirmed and accordingly, it is confirmed.

16.Though the trial court convicted the appellant/first accused for 2 years under Section 13(2) r/w 13(1)(d) of the Act 1988 and sentenced him to under go two years simple imprisonment, the learned counsel appearing for the appellant requested this court to reduce the sentence considering his age and the ailment.

17.Considering the age of the appellant and age related ailments as submitted by his counsel, during the course of arguments, while confirming the conviction, this Court deems it fit to reduce the sentence from 2 years rigorous imprisonment to one year rigorous imprisonment imposed on the appellant/first accused for the offence under Section 13(2) r/w 13(1) (d) of the Act. The sentence imposed on the appellant by the trial court under Section 7 of the Act, i.e., to undergo rigorous imprisonment for one year is confirmed. The fine amount and the default sentence imposed by the trial court also stand confirmed. Both the sentences are ordered to run concurrently. The period of incarceration already undergone by the appellant shall be given set off under Section 428 Cr.P.C. The trial Court is directed to take immediate steps to secure the appellant/first accused and commit him to prison to undergo the remaining period of sentence. The bail bonds, if any, executed by the appellant stands cancelled.

18.With the above modifications, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

das

To

1.The Special Court, (For Trial of Cases under
Prevention of Corruption Act),
Trichirappalli.

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

3.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.V.K.VIJAYARAGAVAN, Advocate Sr. No. 50021

CRL.A(MD)No.190 of 2013
26.02.2019

TR (09.04.2019) 10P 6C