BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.236 of 2013

The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thiruchirapalli.
(Crime No.3 of 2003) ... Appellant / Complainant

-Vs-

1.Selvarajulu
2.H.Rahmath
3.M.Nagarajan ... Respondents / Accused 1 to 3

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the judgment of acquittal of the respondents / accused 1 to 3 passed in Special Case No.34 of 2011, dated 04.03.2013 by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli and convict the respondents / accused 1 and 3 for the offences under Sections 7, 13 (2) r/w 13(i)(d) of Prevention of Corruption Act, 1988 and convict the second accused for the offences under Sections 7, 13(2) r/w 13 (i)(d) of Prevention of Corruption Act, 1988 r/w 34 IPC.

For Appellant	:	Mr.K.Suyambulinga Bharathi, Government Advocate (Crl.Side)
For R1	:	Mr.C.M.Arumugam
For R2	:	Mr.T.Senthil Kumar For Mr.M.S.Jeyakarthik
For R3	:	Mr.T.Senthil Kumar

JUDGMENT

This Criminal Appeal preferred by the State is directed against the judgment of acquittal of the respondents herein / accused 1 to 3 passed in Special Case No.34 of 2011, dated 04.03.2013 by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli.

2.For the sake of convenience, the parties are referred to as per the rank in the trial Court.

3.The brief facts, which are leading to this case are as follows:-

(i)The first accused is the Deputy Commercial Tax Officer, the second accused is the Assistant Commercial Tax Officer and the third accused is the Commercial Tax Officer. The defacto complainant by name K.R.Muruganantham proposed to open a shop to sell and distribute articles like soaps, chocolates and biscuits under the name and style of "Oswal Agency". For that purpose, he required a registration certificate from the Commercial Tax Department, so that he contacted the third accused on 20.01.2003, he told him to contact the first accused. Accordingly, the defacto complainant contacted the first accused, who instructed the defacto complainant to bring Form D, a demand draft for Rs.500/- in the name of Commercial Tax Officer, Singara Thopu, a fixed deposit bond for Rs.2,500/-, xerox copy of ration card, xerox copy of rental agreement of the shop and introductory letters from neighboring shop owners. Again, on 30.01.2003 at about 12.00 p.m., when the defacto complainant met the first accused at his office with the required records except the fixed deposit, the first accused asked the defacto complainant to bring the fixed deposit bond for Rs.2,500/-, three copies of passport photos and further demanded Rs.2,500/- separately as an illegal gratification and at that time the second accused was also present there. Further, the first accused threatened the defacto complainant that the registration certificate would not be given, if the amount of Rs.2,500/- was not paid and the second accused also demanded illegal gratification by saying that the said amount is only meager and further, the first accused directed the defacto complainant to hand over the bribe money to the second accused, if he was not available in the office. When the defacto complainant requested the first accused to reduce the amount, the first accused did not oblige.

(ii) Since the defacto complainant is not willing to give bribe amount, he lodged a written complaint Ex.P.3 with the Vigilance Police on 06.02.2003 at about 10.30 a.m., against the accused 1 and 2. Thereafter, P.W.11 Inspector of Police registered a case in Crime No.03 of 2003 under Section 7 of the Prevention of Corruption Act, 1988 under Ex.P.20 and obtained signature from P.W.3. Thereafter, P.W.11 arranged official witness for the purpose of initiating trap proceedings. One Kannan from the Seeds Certification Department and P.W.4 Shanmugam of P.W.D (Water Resource Organisation) came to the Vigilance and Anticorruption Office and were introduced to P.W.3 and they perused the First Information Report and verified the genuineness of the complaint with P.W.3. Then, P.W.3 produced the bribe amount of Rs.2,500/-, containing 25 hundred rupee currency notes M.O.1 series. Then, P.W.11 demonstrated the sodium carbonate and phenolphthalein test to the said witnesses and to P.W.3 and explained its significance. Then, the said money of Rs.2,500/- was handed over to P.W.3 through the Constable. Then P.W.11 instructed P.W.3 to go and meet the accused and if they demand, he was instructed to do at his whims and if the accused received the said amount, then he was instructed to fold his full hand shirt by upwards, when he came out of the office of the accused as a signal. Then he instructed P.W.4 to accompany with him and to watch over the occurrence. For the said procedure, entrustment mahazar under Ex.P.5 was prepared and the numbers of the said currency notes were entered thereon.

(iii) P.W.3 and P.W.4 went to the office of the accused at about

01.15 p.m. P.W.3 and P.W.4 waited outside the office room of the first accused for some time, as he was not available there at that time and after his arrival to his seat, they went inside and then the first accused enquired with P.W.3 as to whether he brought the demanded money and P.W.3 said that he brought the sum of Rs.2,500/-. After receipt of the documents for the registration certificate from P.W.3, he verified the same and took them to the second accused. The third accused asked the first accused as to whether he checked up the documents, he said yes. Then the third accused enquired as to whether P.W.3 brought the amount and when P.W.3 gave the sum of Rs.2,500/- he asked him to hand over the same with the first accused and also asked him to pay a further sum of Rs.500/- in the evening. Accordingly, P.W.3 handed over M.O.1 series to the first accused, who received the same and after counting, he handed over the same with the third accused, who received the same, parted a sum of Rs.400/- to the first accused from the same. P.W.3 and P.W.4 came out with the pre-arranged signal. Then P.W.11 enquired P.W.3 and P.W.4, they narrated the occurrence. Then, P.W.11 along with P.W.3, P.W.4 and other official witness Kannan went inside the office of the accused, P.W.3 identified the first and third accused. P.W.11 introduced himself to the accused. Then immediately, the third accused put down the amount, which was kept in his right hand near his seat. Such as, the first accused also put down the amount, which was kept in his right side seat. P.W.3 was instructed to wait away and hence, he went out. Then P.W.11 instructed to prepare the sodium carbonate liquid in two separate glasses. As per the instruction of P.W.11, when the first accused dipped his two hand fingers separately, the same was turned into pink. The two liquids contained the solution were collected under M.O.2 and M.O.3. When P.W.11 asked the first accused about the tainted money, he told that he received Rs.400/- and identified the same in floor. Then the same was taken and compared with the entrustment mahazar and the same was tallied. Further P.W.11 instructed to prepare another sodium carbonate liquid in two separate glasses. As per the instruction of P.W.11, when the third accused dipped his both hand fingers in that liquid, they turned into pink color. The same was seized under M.O.4 and M.O.5. Then on enquiry about the tainted money, the first accused identified the same, which was lying on the floor. The same was seized and when it was compared with the entrustment mahazar, it was tallied. When P.W.11 enquired about the documents filed by P.W.3, he told that it was sent to the concerned section. P.W.11 seized demand draft for Rs.2,500/- drawn in Panjab National Bank, the three photos of complainant with the file containing Form 7 under Ex.P.6 to Ex.P.12. The attendance Register is marked as Ex.P.13.

(iv) Then the Deputy Superintendent of Police arrested the accused 1 and 3. A seizure mahazar was prepared under Ex.P.14. The observation mahazar Ex.P.15 and the rough sketch Ex.P.21 were also prepared. Then the house of the accused 1 and 3 were searched. The search list for the accused are marked as Ex.P.16 and P.17 respectively.

(v)P.W.12 another Inspector of Police, Vigilance and Anticorruption, Tiruchirappalli took up the case for investigation and received the sanction order Ex.P.1 from one Muthukumarasamy, who was the Commissioner of Commercial Tax as an additional charge. P.W.12 examined P.W.8, Paramanathan, who issued the introductory letter Ex.P.9 to P.W.3 and after investigation, filed final report before the trial Court against the accused persons.

3.After perusal of the records, the trial Court framed charges against the accused 1 and 3 for the offences under Sections 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and against the second accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w 34 IPC.

4.In order to prove the charges, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and marked 21 documents as Exs.P.1 to P.21 and also material objects as M.O.1 to M.O.5. The accused has examined one Jokkin as D.W.1 and did not mark any documents.

5.On consideration of both oral and documentary evidence, the trial Court has rejected the case of the prosecution and accepted the case of the defence and thereby, acquitted the accused 1 and 3 for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and acquitted the second accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 r/w 34 IPC.

6.Aggrieved against the same, the State has preferred this Criminal Appeal.

7.Heard both sides and perused the materials available on record carefully.

8.The learned Government Advocate (Crl.Side) appearing for the State would submit that normally, this Court would not entertain the appeal against the acquittal, unless, the order of trial Court is perverse and not looking into the legal parameters. In the present case, P.W.3 is the defacto complainant, P.W.4 is shadow witness and P.W.11 is trap laying officer. On perusal of the above evidence, it is seen that they clearly corroborated each other and the initial demand of Rs.2,500/- is proved by the entrustment mahazar and the complaint of P.W.3 and thereafter, on the date of conducting trap proceedings, the accused 1 and 3 accepted the bribe amount for granting registration certificate in favour of P.W.3 and the said document also seized from the accused's office and the same is marked as Ex.P.6 to Ex.P.12. Though the defacto complainant and P.W.4 shadow witness corroborated each other, there is no direct evidence available to disprove the prosecution case. In the present case, chief examination of P.W.3 was conducted in the year 2006 and the cross-examination by the accused persons was conducted in the year 2007. Taking advantage of the long gap of the cross-examination, the official witnesses have not answered properly, and taking advantage of discrepancy, the trial Court passed the judgment, which is not permissible one.

9.He further submits that basic ingredients required to prove the demand and acceptance is that there must be a demand prior to the acceptance. In the present case, on 30.01.2003, P.W.3 met the first accused in his office, at that time, the second accused also present there. Both were demanded a sum of Rs.2,500/- from the defacto complainant. After elaborate thinking, P.W.3 decided to launch prosecution against the accused persons on 06.03.2003, hence, there is no delay in filing the First Information Report and there is a delay in launching the prosecution. The demand and acceptance of the bribe has been proved by the evidence of P.W.3 defacto complainant and P.W.4 shadow witness. Hence, the prosecution has clearly established the guilty of the accused persons and there is no reason available for the trial Court to disbelieve the prosecution witnesses.

10.He further submits that the trial Court acquitted the accused persons on few grounds. The first ground is small discrepancy in the evidence of the official witness. The chief examination of P.W.8 clearly supported the prosecution case and in his evidence, he stated that P.W.3 demanded a sum of Rs.2,500/- from P.W.8, as if he borrowed a sum of Rs.2,500/- from the third accused and he inclined to repay the same to the third accused. However, he refused to pay the said amount. The same was supported by D.W.1. This Court has to consider the testimony of the evidence of P.W.8 and D.W.1. Further, the trial Court miserably failed to note that there is no delay in filing the First Information Report. Hence, the judgment of the trial Court is perverse and liable to be interfered with.

11.In support of his contention, he relied upon the decision of the Principal Seat of this Court rendered in the case of ***State by Public Prosecutor, Madras Vs. Duraisami*** reported in ***2000-1-L.W. (Crl.) 77***.

12.Per contra, the learned counsel appearing for the first accused would submit that P.W.3 is the defacto complainant, P.W.4 is the shadow witness. The presence of P.W.4 at the time of preparing entrustment mahazar and the trap is suspicious one and P.W.4 is not at all present at the time of preparing entrustment mahazar and the trap proceedings. For the purpose of implicating the first accused, the trap laying officer set up P.W.4 and even on perusal of the evidence of P.W.3 and P.W.4, there is no corroboration each other.

13.The learned counsel drawn attention of this Court in cross-examination of P.W.4. P.W.4 in his cross-examination deposed that on 06.02.2003 he went to the Vigilance and Anticorruption Office by wearing pant shirt. However, P.W.11 has given another dress and directed P.W.4 to change the shirt. However, in the cross-examination of P.W.11, he stated that he did not request P.W.4

to change his dress. Apart from that P.W.8 and D.W.1 clearly deposed that the said amount was borrowed by P.W.3 from the third accused, which was repaid at the time of alleged trap proceedings, in which the trap laying officer secured the amount as legally impermissible and considering the above contradiction and the delay in filing the First Information Report, the trial Court acquitted the accused, which need not be interfered with mechanical manner, unless the order of the trial Court is perverse or not within the legal parameters.

14.The learned counsel for the second accused would submit that though the second accused's name is found in the First Information Report, P.W.3 in his evidence stated that the first accused demanded money from P.W.3 at that time, the second accused is available, except that no other allegation made against the second accused and there is no official relationship between either granting registration certificate or entertaining application. Even during the trap proceedings, the second accused was in the office and hence, the allegation is levelled against the second accused for demand of bribe amount. However, unless the bribe amount is accepted by the second accused, demand alone will not sufficient to prove the offence under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, hence, the basic requirement under Section 34 IPC is not available and there is no livelink for demand and acceptance and not even a single evidence is available to implicate the second accused in the present case. Hence, the judgment of the trial Court need not be interfered with. Therefore, he prayed for dismissal of this appeal.

15.The learned counsel for the third accused would submit that he is not available in the office at the time of initial demand. P.W.3 allegedly handed over the money to the first accused, thereafter, the first accused handed over the same to the third accused, in which scientific test also proved against the third accused by the prosecution. However, there is a material contradiction in this regard and the evidence of P.W.3 and P.W.4 is not corroborated each other and the cross-examination of P.W.8, chief examination of D.W.1 clearly disproved the prosecution theory. Accordingly, the third accused rebutted presumption under Section 20 of the Prevention of Corruption Act, 1988. Accordingly, he prayed for acquittal.

16.He further submits that the sanction of the prosecution issued by P.W.1 is totally non-application of mind. In respect of the third accused, sanction authority is P.W.2.

17.In the light of the above submissions, now it has to be analysed whether the order of acquittal passed by the trial Court can be interfered by this Court with the above materials, whether the prosecution discharged the presumption rendered under Section 20 of the Prevention of Corruption Act, 1988 for demand and acceptance by the accused 1 and 3 and the sanction authority has applied his mind, while issuing sanction of the prosecution against the third accused or not?.

18.On perusal of the evidence as well as the documents to institute the case, it is seen that P.W.3 defacto complainant presented the application for running a shop under the name and style of “Oswal Agency”. The said application and other documents are seized from the third accused's office by the prosecution under Ex.P.6 to Ex.P.12.

19.On perusal of the above records, it is clear that P.W.3 presented the said application on 06.02.2003 along with other materials seized by the prosecution and Ex.P.3 complaint discloses that initially P.W.3 met the first accused on 20.01.2003 and he instructed to Form D, a demand draft for Rs.500/- in the name of Commercial Tax Officer, Singara Thopu, a fixed deposit bond for Rs.2,500/-, xerox copy of ration card, xerox copy of rental agreement of the shop and introductory letters from neighboring shop owners for granting registration certificate from Commercial Tax Department and thereafter, again he met the first accused on 30.01.2003 along with the required records except the fixed deposit. After perusing the documents, he demanded a sum of Rs.2,500/- as bribe amount and instructed to get two no objection certificates and Rs.2,500/- for Fixed Deposit in favour of the Commercial Tax Officer. Thereafter, the same was informed to P.W.11 trap laying officer. The trap laying officer arranged official witnesses and prepared entrustment mahazar and completed the pre-trap proceedings and directed P.W.3 and P.W.4 shadow witness to proceed with the accused's office. Accordingly, on the same date, on 06.02.2003, P.W.3 and P.W.4 went to the office of the first accused and handed over the relevant materials. Thereafter, the first accused perused the materials and collected the bribe amount from P.W.3 with two hands and handed over the same to the third accused. Thereafter, the third accused given a sum of Rs.400/- to the first accused. The evidence of P.W.3 clearly corroborated by P.W.4.

20.This Court simultaneously perused the evidence of P.W.3 and P.W.4. They clearly corroborated the happenings in the trap proceedings held on 06.02.2003 and the acceptance of bribe amount also proved by the scientific test on receiving the amount by hands of the accused 1 and 3 and expert opinion was also marked under Ex.P.19, in which phenolphthalein test also proved the commission of offence committed by the accused persons. Whether it is sufficient to prove the present case. This Court's answer is yes. The basic ingredients required for proving the trap case is demand and acceptance and there are ample evidence available to prove the demand made by the first accused. The accused 1 and 2 demanded money from P.W.3 and the same is accepted by the accused 1 and 3 on 06.02.2003 in the presence of P.W.4 shadow witness. Apart from the above, the trap laying officer also corroborated the evidence of P.W.3 and P.W.4 by recovering the bribe amount of Rs.2,500/- (Rs.400/- from the first accused and Rs.2,100/- from the third accused). However, at the hands, there is no proper explanation from the accused how they possessed Rs.2,500/-. In the absence of any proper explanation, this Court has no other option except to accept the prosecution version that the first accused received Rs.2,500/- handed over to the third accused and the third accused has taken his share Rs.2,100/-, which is clearly established through the prosecution witnesses and the material objects.

21.Now, it is to be analysed whether this Court can interfere with the order of acquittal passed by the trial Court. It is relevant to mention the decision relied upon by the learned Government Advocate (Crl.Side) for the State rendered in the case of ***State by Public Prosecutor, Madras Vs. Duraisami*** reported in ***2000-1-L.W. (Crl.) 77***. The relevant portion of the judgment reads as follows:-

> *"18.Where the trial Court had given clear, cogent and convincing reasons for disbelieving evidence of the prosecution witnesses, the appellate Court would not be justified while reversing the acquittal by reappraising the evidence and not considering the findings of the trial Court or demonstrating that they were not sustainable at all.*
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> 19.However, if the appellate Court finds that the reasoning of the trial Court in rejecting the evidence of important witnesses is highly discrepant and patently erroneous which could not be accepted at all, then the appellate Court shall interfere with the order of acquittal.
>
> 20.The above principles have been laid down by the Apex Court in the following decisions.
> 1.Awadhesh Vs. State of M.P. (AIR.1988 SC 1158=1988 Crl.L.J.1154);
> 2.Ramesh B.Doshi Vs. State of Gujarat (1996 Crl.L.J.2867 (SC));
> 3.Tallurri Venkaiah Naidu Vs. Public Prosecutor, High Court, A.P. (1997 SCC (Cri) 175).
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> 21.Thus, the ratio decided in the above cases is that the appellate Court before making appraisal of the evidence available on record independently should necessarily go into the reasonings given by the trial Court for acquitting the accused. Only when this Court finds that the said reasonings are palpably wrong, it can make a reappraisal of the evidence to arrive at its own conclusion."

22.The law with regard to the power of the Appellate Court to interfere with the order of acquittal is well settled. The Appellate Court is required to seek answer to the question as to whether the findings of the trial Court was wrong, manifestly erroneous and not based on cogent and clear evidence. If this Court answers the above question in positive, this Court has power to interfere with the order of acquittal, if negatived, it is not to be interfered with.

23.Now, it is the duty of this Court to analyze the reasons for acquitting the accused by the trial Court, which are as follows:-

"*1.There is a delay of 7 days in giving the information and that there is no explanation for the same and that the same make the prosecution case as doubtful.*

2.P.W.3 is initially suppressed certain aspects and acepted the same subsequently and this would make his evidence to be considered more cautiously and to make his evidence suspicious.

3.The admission of P.W.4 that there is no record for his accompanying during the trap proceedings make suspicious about his presence during the trap proceeding and his variation in certain other aspects indicated above also make his presence during the trap proceeding suspicious.

4.The evidence of P.W.3 is nothing but an evidence of accomplice and needs corroboration in material particulars and when the evidence of P.W.4 is suspicious, the reiteration of demand and to have made by the first accused and the third accused on 06.02.2003 can not corroborate by P.W.4 and further there is no corroboration for the alleged demand on 30.01.2003.

5.When the defense version that P.W.3 borrowed a sum of Rs.2,500/- as hand loan as spoken by D.W.1 and as corroborated by the cross-examination of P.W.8 can also be presumed through the evidence of P.W.4 to certain extent as it is plausible or probable.

6.When the evidence of P.W.4 regarding the statement of the accused is considered along with the evidence of P.W.8 and D.W.1, the defense version has been probablised and on the other hand if the presence of P.W.4 during trap proceedings is suspicious, there is no corroborative evidence for the evidence of P.W.3 to prove the reiteration of demand and handing over the tainted money on 06.02.2003."

24.As discussed above, mere delay in lodging complaint will not vitiate the entire prosecution case. The Court has to apply his mind whether the demand and acceptance is established by the prosecution before the trial Court through the evidence of the prosecution witness. There are some discrepancies with regard to the dress weird by P.W.3 and P.W.4 on the date of obtaining statement under Section 161 Cr.P.C., by P.W.12 and small discrepancy will not vitiate the entire prosecution case.

25.In the present case, the prosecution has clearly established that there was an initial demand by the first accused thereafter, the accused 1 and 3 accepted the bribe amount for issuance of registration certificate in favour of P.W.3. The documentary evidence of Ex.P.6 to Ex.P.12 clearly demonstrated the prosecution case.

26.On a careful scrutiny of the records, I am of the considered opinion that not only the above reasonings are wrong, but also the entire approach adopted by the trial Court in appreciation of the materials available on record would reflect utter perversity. In other words, it can be stated that none of the reasonings given by the trial Court for concluding that the prosecution case is not reliable is not based upon any evidence available in this case, but the entire finding of the trial Court is thoroughly based upon misreading of the evidence.

27.On going through the judgment impugned, I have no doubt that the trial Court has misdirected itself by patently wrong and tenuous considerations and consequently, it resulted in unmerited acquittal of the accused.

28.In view of the above, I have no option except for accepting the prosecution case. However, this Court come to different conclusion that the prosecution has not established the case against the second accused, except the First Information Report no other documents are available to implicate the second accused in this case.

29.In such circumstances, I am inclined to confirm the acquittal of the second accused in this case. However, I am inclined to convict the accused 1 and 3 for the above reasons. Accordingly, they are convicted for the offences under Sections 7, 13(2) r/w 13(i)(d) of Prevention of Corruption Act, 1988 r/w 34 IPC and sentenced to undergo one year rigorous imprisonment and imposed to pay a fine of Rs.5,000/- in default to undergo one month rigorous imprisonment.

30.Accordingly, this Criminal Appeal is partly allowed to the extent as indicated above.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Special Judge,
   Special Court for Trial Cases under Prevention
   of Corruption Act,
   Trichirapalli.

2. The Inspector of Police,
   Vigilance and Anticorruption Wing,
   Trichirapalli.

3. The Superintendent,
   Central Prison, Trichy.

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

+1cc to Mr.C.M.Arumugam, Advocate in SR.No.52773
+1cc to Mr.T.Senthil Kumar, Advocate in SR.No.52478

CRL.A.(MD)No.236 of 2013

07.03.2019

KK-03.04.2019/11P-7C