BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.369 of 2013

State of Tamil Nadu,
Represented by,
The Inspector of Police,
Department of Vigilance and Anti Corruption,
Sivagangai.
(Crime No.4 of 1999) ... Appellant / Complainant

-Vs-

A.Kaja Mohammed ... Respondents / Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to allow the appeal, set aside the judgment of acquittal dated 04.04.2013 in C.C.No.38 of 2001 on the file of the learned Chief Judicial Magistrate cum Special Judge, Sivagangai, convict and sentence the respondent / accused.

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

For Respondent: Mr.C.Ramachandran

JUDGMENT

This Criminal Appeal preferred by the State is directed against the judgment of acquittal of the respondent herein / accused dated 04.04.2013 in C.C.No.38 of 2001 on the file of the learned Chief Judicial Magistrate cum Special Judge, Sivagangai.

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 accused is the Revenue Inspector in Singampunari Taluk in Sivagangai District. P.W.2 defacto complainant is the Ex-President of Kannamangalampatti Panchayat, Singampunari Taluk. His father had two wives. The defacto complainant is the second wife's son and his father passed away 17 years ago. Before his death, his father executed a will and the defacto complainant was allotted 8 acres of wet lands and he was not able to secure the sufficient income from his lands. Hence, he wanted to do contract work. Accordingly, his relative P.W.4 advised P.W.2 for the purpose of contract work, he must get solvency certificate from the Tahsildar.

(ii)Therefore, on 17.03.1999 P.W.2 obtained Encumbrance Certificate Ex.P.4 from the Sub Registrar Office by paying Rs.86/- as encumbrance fees. On 22.03.1999 he presented a petition before the Tahsildar, Thirupathur, for getting a solvency certificate. P.W.6 Deputy Tahsildar made an endorsement on the petition, calling for the report of the Revenue Inspector and handed over the same to P.W.2 for producing it to the Revenue Inspector / accused. On 22.03.1999 P.W.2 met the Village Administrative Officer P.W.5. P.W.5 filled up the application and directed P.W.2 to hand it over to the Revenue Inspector / accused. But, he was not available. Hence, P.W.2 returned home. Again, on 07.04.1999 P.W.2 met the accused at about 04.00 p.m., at his residence. The accused asked him to remit Rs.1,000/- by way of challan in the treasury for Solvency Certificate. He also demanded a sum of Rs.3,000/- as illegal gratification to issue Solvency Certificate. He got all the records from P.W.2 and also obtained signature in blank paper, which was marked as Ex.P.5. The accused asked P.W.2 to meet P.W.5 and get documents prepared. On 08.04.1999, P.W.2 remitted Rs.1,000/- in the treasury under Ex.P.8. On 09.04.1999 at about 08.00 a.m., P.W.2 met P.W.5 and gave encumbrance certificate and Ex.P.8 treasury challan. P.W.5 gave a document written in English asked P.W.2 to get it typed and to bring back. Accordingly, P.W.2 gave the affidavit typed in English under Ex.P.7 and gave to him. P.W.5 gave all the records to P.W.2 and asked him to meet the accused to get the signature and then to meet the Tahsildar to get the Solvency Certificate. P.W.2 met the accused at 09.30 a.m., on 09.04.1999 in his house. The accused, after P.W.2 making a plea of inability, reduced the demand from Rs.3,000/- to Rs.1,000/-. The accused told P.W.2 to give bribe amount on 15.04.1999.

(iii)P.W.2 was not willing to give bribe amount. On 14.04.1999, P.W.2 met P.W.4 his close friend and informed the demand of bribe made by the accused. On 15.04.1999 both P.W.2 and P.W.4 went to the house of the accused. The accused had demanded Rs.1,000/- to be paid before 6.00 p.m., on that day, failing which the Solvency Certificate would not be given to P.W.2.

(iv)Then, P.W.2 told P.W.4 to give a complaint against the accused before the Vigilance and Anticorruption. P.W.2 was in possession of Rs.300/- and he obtained Rs.700/- as loan from P.W.4. On 15.04.1999 at 02.00 p.m., both P.W.2 and P.W.4 went to the office of the Vigilance and Anticorruption and P.W.2 gave an oral statement to P.W.8, who recorded the same and registered the First Information Report in Crime No.04 of 1999 under Ex.P.27. The oral complaint reduced to writing by P.W.8 is Ex.P.11.

(v)Thereafter, P.W.8 arranged official witnesses for the purpose of initiating trap proceedings. One Sankaramoorthy and Mayadevar, who was examined as P.W.3 came to the Vigilance and Anticorruption Office and were introduced to P.W.2 and they perused the First Information Report and verified the genuineness of the complaint with P.W.2. Then, P.W.2 produced the bribe amount of Rs.1,000/-, containing 10 hundred rupee currency notes M.O.2 series. Then, P.W.8 demonstrated the sodium carbonate solution and phenolphthalein test to the said witnesses and to P.W.2 and explained its significance. Then, the said money of Rs.1,000/- was handed over to P.W.2 through one Police Constable. Then P.W.8 instructed P.W.2 to go and meet the accused and if the accused demands the bribe amount, he was instructed to do at his whims and if the accused received the said amount, then he was instructed to give signal by liting fire with match box. Then he instructed P.W.3 to accompany with him and to watch over the occurrence. For the said procedure, entrustment mahazar under Ex.P.12 was prepared and the numbers of the said currency notes were entered thereon.

(vi)P.W.8 went along with P.W.2, 3 and team members to Singampunari. P.W.8 instructed P.W.2 and 3 to meet the accused in his office cum residence. When they went to the house of the accused, the house was found locked and neighbor of the house informed P.W.2 that the accused has gone to his native village with family and would return only on Saturday. Hence, the entire party returned to Sivagangai. P.W.8 got the currency notes from P.W.2 and kept it in the locker in the office and prepared a Mahazar under Ex.P.13. On 17.04.1999 at about 10.00 a.m., P.W.2 and P.W.3 assembled at the office of the Vigilance and Anticorruption, Sivagangai and proceeded to the house of the accused at Singampunari and reached at 12.30 p.m. The accused came in M 80 Motor Cycle and entered his house after opening the door. Both P.W.2 and P.W.3 followed him. On seeing them, the accused questioned on what matter they have come to meet him. Then, P.W.2 informed the accused that he has come with reference to obtaining the solvency certificate. The accused told them that it cannot be done immediately and it might take one or two days and asked them to meet on 19.04.1999. Hence, on 19.04.1999 at about 11.30 a.m., went to the quarters of the accused and learnt that the accused had gone to the Taluk Office, Thiruppathur and would return home for lunch. After informing these facts to P.W.8, they were waiting near a temple there. At about 01.00 p.m., they noticed that the accused carrying the Village Administrative Officer P.W.5 on the pillion of his Bajaj M.80 vehicle went towards his quarters. P.W.2 and P.W.3 were waiting in the front portion of his quarters at 01.05 p.m., where the accused reiterated his demand and obtained the above said currency notes of Rs.1,000/- from P.W.2 as illegal gratification other than legal remuneration to make his recommendation for issuing the solvency certificate in favour of P.W.2. After counting the amount, the accused went into a room of his quarters, came back, asked P.W.2 to collect the papers relating to his solvency certificate by 07.00 p.m., on that day and proceeded towards west on his bajaj M.80 vehicle by taking P.W.5, who was found waiting outside, on it's pillion.

(vii)Thereafter, P.W.2 gave pre-arranged signal and P.W.8 and his party rushed there. P.W.8 and two other official witnesses in the jeep, followed the vehicle of the accused and intercepted it near Raja Theatre in Singampunari. Then P.W.8 took the accused inside Raja Theatre and with the help of one Kannan, an employee of the theatre, prepared sodium carbonate solution in a white tumbler. The accused was instructed to dip his hands into the sodium carbonate solution and his hands turned into pink color and was asked about the tainted currency notes received from P.W.2.

(viii)The accused orally confessed that he had kept the said currency notes into the cub board of his bedroom and in furtherance of his confession, P.W.8 and his party went to the quarters and seized the tainted currency notes and the same was compared with the numbers noted down in the entrustment mahazar and the same was tallied. Further, P.W.8 searched the quarters of the accused, but no other incriminating material was found. Thereafter, the accused was duly remanded to judicial custody and he was suspended from service.

(ix)P.W.10 another Inspector of Police, Vigilance and Anticorruption Unit, Sivagangai took up the case for further investigation, collected the evidence and examined P.W.2 to 9 and recorded their statements.

(x)P.W.11 took up the case for further investigation and got sanction from P.W.1 to prosecute the accused and examined P.W.1, District Collector of Shivaganga and recorded his statement. After completing the investigation, he filed final report before the trial Court.

4.After perusal of the records, the trial Court framed charges against the accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter called as 'the Act').

5.In order to prove the charges, the prosecution has examined 11 witnesses as P.W.1 to P.W.11 and marked 29 documents as Exs.P.1 to P.29 and also material objects M.O.1 to M.O.5. The accused did not examine any witness. However, he marked four documents as Exs.D.1 to D.4.

6.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 for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act.

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

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

9.The learned Special Public Prosecutor appearing for the State would submit that it is the admitted case of the prosecution as well as the accused that P.W.2 defacto complainant applied for solvency certificate to P.W.6 Tahsildar and he made an endorsement and forwarded the same to the Filed Level Officer. The respondent accused is the one of the Field Level Officer / Revenue Inspector and he has to recommend for issuance of solvency certificate to the defacto complainant. Initially, the defacto complainant met the respondent / accused on 07.04.1999 and on the same day, he demanded a sum of Rs.3,000/- from the defacto complainant and directed the defacto complainant to pay a sum of Rs.1,000/- in the Treasury and accordingly, the defacto complainant remitted a sum of Rs.1,000/- on 08.04.1999. Hence, the initial demand is well established by examining P.W.2 and Ex.P.6 challan. Since the defacto complainant is not willing to pay the bribe amount, he made a complaint before the trap laying officer and he registered the case in Crime No.04 of 1999 and arranged for official witnesses and conducted pre-trap proceedings. Though on 15.04.1999 and 17.04.1999, the accused did not demand and accept the bribe amount from the defacto complainant in the presence of the shadow witness P.W.3, he demanded and accepted the bribe amount on 19.04.1999 from the defacto complainant in the presence of P.W.3. The evidence of P.W.2 and 3 clearly corroborated each other. In furtherance to the corroboration, the prosecution has clearly proved the acceptance of the bribe amount by conducting phenolphthalein test and to that effect, forensic expert also examined as P.W.9 and his opinion is also marked as Ex.P.26.

10.He would further submit that in an earlier occasion, the trial Court acquitted the accused. Against which, the said DVAC preferred an appeal before this Court in Crl.A.(MD)No.1082 of 2003. This Court, by its order dated, 12.09.2008, accepted the case of the prosecution, however, remanded the matter for trial before the trial Court. Thereafter, again on the basis of the records, the matter was argued before the trial Court. However, the trial Court once again acquitted the accused on extraneous ground. Though the case was instituted in the year 1999, successfully the case was dragged upto 2013 and the present impugned order of acquittal passed by the trial Court is not based on any material contradiction in corroboration of the evidence. The trial Court substituted his own reasons and acquitted the accused, which is unsustainable one. Accordingly, he prayed for conviction.

11.In support of his contention, he relied upon the decision of the Hon'ble Apex Court reported in ***1997 SCC (Cri) 654 (C.K.Damodaran Nair Vs. Government of India)*** and ***(2018) 9 SCC 242 (The State of Gujarat Vs. Navinbhai Chandrakant Joshi and others).***

12.Per contra, the learned counsel for the respondent / accused would submit that the law with regard to the power of the

Appellate Court to interfere with the order of acquittal is well settled and the Appellate Court cannot interfere with the order of acquittal in routine and mechanical manner. In fact, there are material contradiction in between P.W.2, 3 and 5. P.W.2 is the defacto complainant, P.W.3 is the shadow witness and P.W.5 is the Village Administrative Officer, who accompanied with the accused at the relevant point of time in his moped. According to the prosecution, the initial demand made on 07.04.1999. However, the fact remains that the accused remitted a sum of Rs.3,000/- in the Treasury on 08.04.1999. Before remitting the treasury amount, demanding the bribe amount of Rs.3,000/- as illegal gratification is imaginary and unsustainable one. Even on 09.04.1999 P.W.2 met the Village Administrative Officer P.W.5 and gave encumbrance certificate and treasury challen. In fact, he made an endorsement on 09.04.1999. All those documents are marked as Ex.P.2, in which the accused did not sign or make endorsement. Further, the bribe amount reduced from Rs.3,000/- is imaginary one.

13.He would further submit that in fact, the defacto complainant interested to pay a sum of Rs.1,000/- as contribution to the Red Cross Society. Initially, he approached the accused for solvency certificate. On 19.04.1999, P.W.2 has submitted solvency forms along with four Red Cross Society applications and a sum of Rs.1000/- (Rs.250/- per life membership form). However, even as per the prosecution case, initial demand is 07.04.1999 and the same was reduced on 09.04.1999. Thereafter, the defacto complainant filed the complaint on 15.04.1999, further the prosecution did not establish that there was subsequent demand on 15.04.1999 and 17.04.1999, even in the presence of the shadow witness P.W.3, the accused did not ask any amount from the defacto complainant, only on 19.04.1999 he innocently asked what happened his request and that request is only application for solvency certificate and Red Cross Society and he did not demand any amount from the defacto complainant in the presence of P.W.3 and there is material discrepancy.

14.He further added that though the trap laying officer allegedly instructed the defacto complainant, after receiving the bribe amount gave signal, he did not give signal in front of the house and there is no corroboration between the defacto complainant and the shadow witness and they secured the accused only in front of Raja Theatre. In the meanwhile, the accused distributed the pamphlets to the school. However, that was revealed either in the evidence of P.W.2 or P.W.3. Though the alleged phenolphthalein test was conducted in Raja Theatre, the mahazar was gone only in his house after recovery. This contradiction clearly revealed that there is no acceptance on the part of the accused and initially, the trial Court acquitted the accused. Thereafter, the DVAC preferred an appeal with ulterior motive before this Court. This Court remanded the matter to the trial Court and the trial Court again took up the matter and acquitted the accused. In two times, the case was ended in acquittal, in which the accused is entitled to benefit of doubt even two views are possible. One view is in favour of the defacto complainant. Accordingly, he prayed for confirming the acquittal passed by the trial Court.

15.In the light of the above submissions, now it is to be analysed whether the judgment of the trial Court acquitting the accused is justified in law and whether the accused could be convicted for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act.

16.To prove the guilt of the accused, the prosecution has examined 11 witnesses. P.W.1 is the sanctioning authority, who sanctioned the prosecution against the accused. However, either before the trial Court or this Court, the accused did not attack the sanction order. P.W.2, 3 and 8 are the crucial witnesses in the present case with regard to the proof of demand and acceptance.

17.P.W.4 is the relative of the defacto complainant. In his evidence, he deposed that he accompanied with P.W.2 on 07.04.1999 to meet the accused and in his presence, he demanded a sum of Rs.3,000/-. P.W.5 Village Administrative Officer, who initially helped P.W.2 to fill up the application, made an endorsement on 09.04.1999 and recommended for solvency certificate. P.W.6 Tahsildar, made an endorsement and forwarded the solvency certificate to the Field Level Officer / accused. P.W.7 is the Court Officer, who forwarded the material objects for expert opinion and P.W.8 is the trap laying officer. P.W.9 is the Scientific Officer, who deposed with regard to the phenolphthalein test conducted by P.W.8. P.W.10 and 11 are Investigating Officer and their evidence is not much relevant to the present case. The entire case revolves only around P.Ws.1 to 3 and 8.

18.Though P.W.2 did not reveal with regard to the second demand on 19.04.1999, P.W.3 shadow witness clearly deposed in his evidence with regard to the second demand made by the accused in presence of him. P.W.2 and P.W.3 corroborated each other. The trial Court held that the demand and acceptance of illegal gratification was not proved and the trial Court has assigned reasons for acquittal that the demand and acceptance is suspicious one and the same could not have been happened. However, the trial Court failed to discuss and give importance to the evidence of P.W.2 and P.W.3 and discuss the material evidence. In fact, the trial Court failed to consider that the accused spoke about the Red Cross Society only at the time of questioning him under Section 313 Cr.P.C., and at the time of cross-examination of P.W.2, however, prior to that the accused did not raise the said plea. Though the trap was conducted in the year 1999, at the time of preparing recovery mahazar the accused did not raise this issue and no documents can be produced at the time of seizure. In fact, P.W.2 was cross-examined on 17.06.2002. However, the trap was concluded on 19.04.1999. After three years, he raised the said issue before the trial Court and to that effect, he did not examine any witnesses, only Exs.D.1 to 4 i.e., Red Cross Society applications were produced. It is not sufficient to disprove the prosecution case.

19.It is well settled that under Sections 7 and 13(2) r/w 13(1) (d) of the Act, the prosecution has to establish the existence of demand as well as acceptance of gratification by the public servant. In the case of ***B.Jayaraj Vs. State of Andhra Pradesh*** reported in ***(2014) 13 SCC 55***, it is clearly held as follows:-

"7.*Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine quo non to constitute the said offence and mere recovery of currencynotes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe."*

20.In the present case, P.W.2 and some extent P.W.4 deposed that initial demand made on 07.04.1999. In furtherance to the initial demand, on 19.04.1999 the accused officer demanded the bribe amount in the presence of shadow witness P.W.3. Hence, the prosecution has established the demand and further, acceptance also proved by conducting phenolphthalein test and recovering the amount from the accused.

21.The demand by the accused is proved by the prosecution through the evidence of P.W.2 and the same is corroborated by P.W.3. However, none of the above evidences were discussed by the trial Court and the trial Court by substituting his own reasons acquitted the accused, which is unsustainable one. Insofar as the presumption raised under Section 20 of the Act is concerned, it is rebuttable and that initial burden lies on the prosecution. If the prosecution successfully discharged the initial burden, then the accused shall rebut the presumption by adducing proper and acceptable evidence. In the present case, the prosecution has established the demand and acceptance by examining P.W.2 and P.W.3 and to some extent P.W.4 also. Now, it is for the accused to rebut such presumption. In order to rebut such presumption, the accused marked Exs.D.1 to D.4 application for Red Cross Society and Ex.D.6 circular issued by the Government. As per the said circular, the revenue authorities are directed to collect the Red Cross Contribution. However, on perusal of Ex.D.6, it reveals that the circular was issued in the year 1993. However, the trial Court wrongly mentioned, as if the circular was issued in the year 1994 itself and that the accused has not rebutted the presumption through acceptable materials.

22.On a careful scrutiny of the records, I am of the considered opinion that not only the reasonings given by the trial Court 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.

23.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.

24.In view of the above, I have no other option except for accepting the prosecution case. In such circumstances, I am inclined to convict the accused for the above reasons. Accordingly, the accused is convicted for the offences under Sections 7 and 13(2) r/w 13(i)(d) of the Act and sentenced to undergo one year rigorous imprisonment and imposed to pay a fine of Rs.2,500/- in default to undergo one month rigorous imprisonment for the offence under Section 7 of the Act and sentenced to undergo one year rigorous imprisonment and imposed to pay a fine of Rs.2,500/- in default to undergo one month rigorous imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Act. The above sentences shall run concurrently.

25.Accordingly, this Criminal Appeal is partly allowed to the extent as indicated above. However, liberty is granted to the accused to surrender before the trial Court, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate cum Special Judge,
Sivagangai.

2. The Inspector of Police,
Department of Vigilance and Anti-Corruption
Sivagangai.

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

+2 CC to M/s.C.RAMACHANDRAN, Advocate (SR-55746[F] dated 21/03/2019

CRL.A.(MD)No.369 of 2013
20.03.2019

MSI-09.04.2019/9P-6C