Bail Slip

The appellant viz J.Panjanathan S/o.Jaganathan was directed to be released on bail vide court order of this Court dated 12.02.2013 made in MP(MD)No.1 of 2013 in Crl.A.(MD).41 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.41 of 2013

J.Panjanathan ... Appellant / Sole Accused

-Vs-

State Represented by
The Inspector of Police,
Vigilance and Anticorruption Wing,
Nagapattinam District. ... Respondent / Complainant
(Crime No.7 of 2009)

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment and conviction passed by the Special Court for trial of cases under the Prevention of Corruption Act, Trichy in Special Case No.117 of 2011, dated 31.01.2013 and acquit the appellant herein.

For Appellant : Mr.T.Senthil Kumar

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

JUDGMENT

The convicted accused is the appellant herein. He has filed this Criminal Appeal to set aside the conviction and sentence passed by the Special Court for trial of cases under the Prevention of Corruption Act, Trichy in Special Case No.117 of 2011, dated 31.01.2013.

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

(i)The defacto complainant applied for a certificate for Destitute Widow with the Sub-Collector's Office at Mayiladuthurai and the same was forwarded to the Taluk Office, Sirkali and in turn, it was transferred to the Revenue Inspector, Sirkali. Before the said application, the defacto complainant applied for a Widow Certificate for Distress Relief Scheme and a sum of Rs.10,000/- (Rupees Ten Thousand Only) was sanctioned and disbursed to her on the ground that her husband Ramesh died. It is also an admitted case that the defacto complainant earlier married to one Murugesan and according to the defacto complainant, the said marriage was dissolved before the Panchayathars as per the customs prevailing in her community and she got married with the said Ramesh. The defacto complainant enquired about her application for Destitute Widow Certificate with the Revenue Inspector on 04.08.20909 at 10.30 a.m., and when she contacted the Revenue Inspector over mobile phone, she was asked to contact the accused, who was the Village Administrative Officer, Sirkali and she was instructed to do as per his instruction and further, the Revenue Inspector said that he had already informed to the accused how much he has to receive and how much the complainant has to be given to him. When she contacted the accused over mobile phone, the Village Administrative Officer demanded a sum of Rs.500/- for himself and Rs.500/- for the Revenue Inspector and directed the defacto complainant to bring the demanded bribe amount on the next day to his office as a motive for doing an official act.

(ii)Since she is not willing to pay the bribe, she went to the Vigilance and Anti Corruption Police Station, Nagapattinam and gave a complaint under Ex.P.23 to the Inspector of Police on 06.08.2009 at about 10.00 a.m., and he received the same and registered a case in Crime No.7 of 2009 under Section 7 of the Prevention of Corruption Act, 1988 under Ex.P.31 First Information Report. Then P.W.12 sent requisition to the Chief Educational Officer, Nagapattinam and to the Regional Joint Director of Department of Animal Husbandry for deputing some officials for initiating trap proceedings. P.W.2 and an another official witness came to the Vigilance and Anticorruption Office and they were introduced with the complainant and gone through the complaint and enquired about the genuineness of the same with the complainant. Thereafter, P.W.12 asked the bribe amount of Rs.1000/-, which has to be given to the accused. P.W.7 gave a sum of Rs.1000/- consisting of one five hundred rupee and five hundred rupee currency notes to the official witness as per instructions of P.W.12. The numbers of currency notes were noted in the entrustment mahazar. The above said sum of Rs.1000/- marked as M.O.1 series. Thereafter, P.W.12 conducted pre-trap proceedings. Thereafter, P.W.7 was instructed to go and meet the accused and enquire about her certificate and if the accused demanded the bribe amount, then, she was instructed to give bribe amount and to give pre-arranged signal. P.W.2 another official witness was instructed to accompany with the complainant P.W.7 and watch over the occurrence. Entrustment mahazar Ex.P.2 was prepared for the above said happenings.

(iii)P.W.7 went inside the office of the accused, while P.W.2 was standing outside the office. P.W.7 enquired about her Destitute Widow Certificate with the accused. The accused asked P.W.7 whether she brought the bribe amount. P.W.7 replied that she brought the same and gave the tainted amount of Rs.1000/- to the accused. He received the same, counted and kept it in his shirt pocket. At that time P.W.2 was nearer to P.W.7 at the office of the accused. After that P.W.7 came out from the office of the accused and gave pre-arranged signal. Then P.W.12 enquired P.W.7 and P.W.2. They narrated the above happenings to P.W.12. After identified the accused by P.W.7 and P.W.2, P.W.12 instructed P.W.7 to wait outside and as such P.W.7 went out. P.W.12 introduced him with the accused and the accused got perplexed. P.W.12 instructed to prepare sodium carbonate liquid in two separate glasses through the Head Constable and accordingly, he prepared the same. As per the instructions of P.W.12, when the accused dipped his fingers of his right hand and left hand into the liquid contained in two separate glasses, they were turned as pink. P.W.12 seized the liquids under a mahazar and recovered the bribe amount from the accused.

3.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.

4.In order to prove the charges, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and marked 38 documents as Exs.P.1 to P.38 and also material objects as M.O.1 to M.O.6. The accused has not examined any witnesses and marked 8 documents as Exs.D.1 to D.8.

5.After perusing the materials on record, the trial Court has found the accused guilty and convicted the accused and sentenced to undergo six months rigorous imprisonment and to pay a fine of Rs.2500/- in default to undergo simple imprisonment for one month for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for three months for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The above sentences shall run concurrently.

6.Aggrieved against the same, the accused has approached this Court by way of filing this Criminal Appeal.

7.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record carefully.

8.The learned counsel appearing for the appellant would submit that initially, P.W.7 defacto complainant made an application for Distress Relief Fund on 16.02.2009 and a sum of Rs.10,000/- was sanctioned to her on 31.07.2009. In the meanwhile, an application dated 02.06.2009 for Destitute Widow Certificate has been made by the defacto complainant before the Sub-Collector's Office, Mayiladuthurai and the same was forwarded to Tahsildar Office, Sirkali and then the same was forwarded to the office of the Revenue Inspector on 02.07.2009. When the defacto complainant on 04.08.2009 enquired about the application directly to the Revenue Inspector, the Revenue Inspector directed the defacto complainant to contact the Village Administrative Officer and instructed to pay a sum of Rs.1000/-, of which Rs.500/- for himself and Rs.500/- for Village Administrative Officer. Thereafter, she met the accused as instructed by the Revenue Inspector on the same date at 04.00 p.m., and he reiterated the demand of Rs.1000/-. Though that was happened on 04.08.2009, after two days, she made complaint before the Inspector of Vigilance and Anticorruption, Nagapattinam. He further submits that one Thirunavukkarasu is a relative of the appellant. The defacto complainant / P.W.7 was residing in the house of the said Thirunavukkarasu and his wife and he was harassing her. Therefore, the defacto complainant asked the appellant to warn him, but the appellant refused to do the same. Therefore, the defacto complainant has falsely implicated the appellant / accused in this case. Further, P.W.7 herself admitted that she belongs to Anticorruption Movement Group and P.W.7, P.W.2 and one Balavinayagam used to go to public servants and tell them that they have received bribery demand complaints about them and that if action was not to be taken, they must pay money and they made money in this illegal way.

9.He further submits that P.W.7 initially married one Murugan, thereafter, got divorce from him by executing the bond without filing any divorce petition and suppressing the earlier marriage with Murugan and he died during the accident, P.W.7 got the certificate by affirming false particulars before the authorities concerned. When he wanted to enquire the same, she comes with a false case to stop the accused from taking any action in this regard. In fact the recovered money is belong to the Revenue Inspector, he instructed P.W.7 handed over the said amount to the appellant. The appellant also necessarily received a sum of Rs.1000/- and kept in his shirt pocket without knowing trap proceedings, accordingly, he prayed for acquittal.

10.Per contra, the learned Additional Public Prosecutor appearing for the first respondent would submit that the Village Administrative Officer is not a deciding authority. Both applications viz., Distress Relief Fund and Destitute Widow Certificate are made to the higher authority, namely, Revenue Divisional Officer alone, and he is the competent authority to issue certificate in favour of the defacto complainant P.W.7. These two applications, namely, Distress Relief Fund and Destitute Widow Certificate were filed on 16.02.2009 and 02.06.2009 respectively. The Distress Relief Fund was sanctioned on 31.07.2009 and immediately after receipt of the cheque, when P.W.7 presented the same for collection in the bank, the accused demanded a sum of Rs.1600/-. However, the defacto complainant explained her inability to pay such huge amount of Rs.1600/- and she had to spend the same to the education of her children and running day to day life. However, the accused snatched a sum of Rs.600/- from the defacto complainant. Thereafter, the very same P.W.7 enquired about the Destitute Widow Certificate from the Revenue Inspector. The Revenue Inspector directed the defacto complainant to contact the Village Administrative Officer and directed her to act as per the wish of the Village Administrative Officer. Again as per the directions of the Revenue Inspector, the widow P.W.7 met the accused on 04.08.2009 and he demanded a sum of Rs.1000/- of which Rs.500/- for himself and Rs.500/- for the Revenue Inspector. Since the defacto complainant is not willing to give the bribe amount and she belongs to one Anticorruption Movement Group, she made a complainant on 06.08.2009 before the respondent police. Thereafter, they conducted trap proceedings and arrested the appellant / accused.

11.He further submits that P.W.2 shadow witness and P.W.7 clearly corroborated each other. The evidence of P.W.2 and P.W.7 clearly established the act of the Village Administrative Officer, receiving illegal gratification to process the application through the Revenue Inspector to Tahsildar and her application is pending with the Revenue Inspector for more than one month, in which he received the bribe amount. Hence, the prosecution case is established beyond reasonable doubt and after considering all those material evidence, the trial Court convicted the accused and the well considered judgment of the trial Court need not to be interfered with. Accordingly, he prayed for dismissal of the appeal.

12.In the light of the above submissions, now it is to be analysed that whether the prosecution has proved the case beyond reasonable doubt and whether the conviction and sentence imposed by the trial Court is sustainable in law.

13.The Revenue Divisional Officer P.W.1, who is the sanctioned authority has issued sanction order, which is marked as Ex.P.1. However, the appellant did not made any allegation with regard to the sanction order granted by P.W.1. P.W.2, who is the shadow witness and accompanied with P.W.7 during the trap proceedings, deposed as that of the evidence of P.W.7. However, he did not enter into the Village Administrative Officer's chamber, he was waiting and watched the proceedings. At that time, the accused demanded bribe amount from the defacto complainant. P.W.7 handed over a sum of Rs.1000/- of which Rs.500/- for himself and Rs.500/- for the Revenue Inspector to the accused. Thereafter, P.W.7 came outside the office and gave pre-arranged signal. After receiving the same, P.W.12 came to the office of the accused and instructed to prepare sodium carbonate liquid in two separate glasses through the Head Constable and accordingly, he prepared the same. Thereafter, dipping of both hands of the accused in the sodium carbonate liquid, the liquid turned pink and recovered them along with the tainted money from the accused. The accused put his signature in Observation Mahazar, which is marked as Ex.P.6.

14.P.W.3 and P.W.4, who were working as Assistant and Junior Assistant in the Taluk Office, Sirkali and the Sub Collector's office, Mayiladuthurai respectively, deposed about the applications given by P.W.7 for Distress Relief Fund and Destitute Widow Certificate. P.W.5, who was working in Sirkali Taluk Office as Firka Revenue Inspector, deposed that he recommended to issue Destitute Widow Certificate to P.W.7. P.W.6, who was working as Deputy Tahsildar of Sirkali, deposed that the application of P.W.7 sent to the Revenue Inspector for enquiry. P.W.8, who is working as Scientific Assistant in Forensic Science Laboratory at Chennai, has issued chemical examination report under Ex.P.25. Ex.P.1 BSNL call details has evidenced the call details in between the accused and the Revenue Inspector and P.W.7, defacto complainant.

15.The crucial evidence before this Court is P.W.2 and P.W.7. In the instant case, the defacto complainant and the accused are known to each other earlier. P.W.7 defacto complainant made application for Distress Relief Fund, immediately after the death of her husband and the accused has recommended that she is entitled for Distress Relief Fund. Based on his recommendation, the Distress Relief Fund was granted in favour of P.W.7 and there is no dispute in this regard. However, the accused in his defence, stated that P.W.7 is not entitled for receive the Distress Relief Fund, for which he was lodged by the prosecution. However, in this regard, there is no material placed before this Court. The accused did not make any application to the higher authorities for cancelling the earlier relief fund granted in favour of P.W.7.

16.On perusal of P.W.2, shadow witness, he went along with P.W.7 defacto complainant and confirmed the demand of money from P.W.7 and immediately thereafter, P.W.7 handed over a sum of Rs.1000/- to the accused and the accused received the said amount in his two hands, counted and kept in his shirt pocket. The accused in his evidence stated that there was a previous transaction in between the Revenue Inspector and P.W.7, in which he handed over the money to the accused and the accused received money from the defacto complainant without knowing trap proceedings. However, the accused did not adduce any evidence with regard to the money belonging to the Revenue Inspector. P.W.7 entered into the office of the Village Administrative Officer, he demanded a sum of Rs.1000/- for processing the application of P.W.7. The acceptance of bribe amount is proved by the evidence of P.W.2 and P.W.7 and the official shadow witness P.W.2 accompanied with P.W.7. Hence, the recovery of tainted money from the appellant is well proved by the evidence of P.W.2 and P.W.8 chemical analysis report Ex.P.25.

17.The learned counsel for the appellant would submit that the trap was conducted in the year 2009. At that time, the appellant was on the verge of retirement and the appellant is now 64 years old and he is suffering from age old ailments. Hence, he requests that some leniency may be shown in the sentence awarded by the trial Court.

18.In the instant case, the prosecution has placed sufficient material that the appellant / accused demanded illegal gratification from P.W.7 and the prosecution has established the guilt of the appellant under the charges beyond all reasonable doubt by adducing overwhelming and flawless oral and documentary evidence.

19.On combined reading of the evidence of P.W.2 and P.W.7, there was clear demand and acceptance of the bribe by the accused and hence, I have no hesitation to hold that the prosecution has established that the accused discharging his official duty accepted and demanded the bribe of Rs.1000/- as illegal gratification. Further, this Court comes to different conclusion.

20.On perusal of the entire evidence available on record, I do not find any error in the judgment passed by the trial Court. Therefore, this Court is inclined to confirm the judgment made in Special Case No.117 of 2011 by the Special Court (Vigilance and Anticorruption Court), Trichy, dated 31.01.2013. However, considering the facts and circumstances of the case and considering the age of the appellant, I am inclined to reduce the sentence from two years to minimum sentence of one year for the offence under Section 13(@) r/w 13(1)d) of the Prevention of Corruption Act, 1988. The above sentences shall run concurrently.

21.Accordingly, this Criminal Appeal is partly allowed to the extent as indicated above. Therefore, the trial Court is directed to take immediate steps for securing the accused to commit him for serving the remaining period of sentence.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To

1.The Special Judge,
Special Court for Trial of cases under Prevention of corruption Act, Tiruchirapalli.

2.The Inspector of Police,
Vigilance and Anticorruption Wing,
Nagapattinam District.

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

Copy TO : The Section officer,
Criminal Section/Records
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SENTHIL KUMAR,Advocate(SR-48652[F] dated 21/02/2019)

CRL.A.(MD)No.41 of 2013

KK/05.04.2019 : 8P/6C