BAIL SLIP

Crl.A(MD)No.298/2011:

Ganesan, S/o.Chitraputhiran, Male, Appellant-1/Accused -2 was released on bail as per the order of this Court dated 26.09.2011 made in MP(MD)NO.1/2011 in Crl.A.(MD)NO.298 of 2011.

Crl.A(MD)No.300/2011:

K.Sankaralingam, S/o.Ganapathy Mooppanar, Male, Appellant/Accused No.1, was released on bail as per the order of this Court dated 26.09.2011 made in MP(MD)NO.1/2011 in Crl.A.(MD) NO.300 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.01.2019

CORAM :

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.A.(MD)Nos.298 and 300 of 2011
and
CrlMP(MD)No.10213 of 2018

Ganesan ...Appellant / Accused-2
in CrlA(MD)No.298 of 2011

K.Sankaralingam ...Appellant / Accused-1
in CrlA(MD)No.300 of 2011

Vs.

The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli.
[Crime No.2 of 200] ...Respondent / complainant
in both Cases

Prayer in CrlA(MD)No.298 of 2011: Criminal Appeal filed under Section 374 of Criminal Procedure Code, against the judgment dated 14.09.2011 made in SC No.2 of 2001 by the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli.

Prayer in CrlA(MD)No.300 of 2011: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment rendered by the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli, Tirunelveli District in Special Case No.2 of 2001 vide his judgment dated 14.09.2011 and set aside the same and consequently acquit the appellant honourably.

For Appellant in CrlA(MD)No. 298 of 2011 : Mr.Muthu saravanan for Mr.M.Ramesh

For Appellant in CrlA(MD)No.300 of 2011 : Mr.R.Anand

For Respondent in both Cases : Mr.M.Chandrasekaran, Additional Public Prosecutor

JUDGMENT

These appeals have been filed seeking to set aside the judgment dated 14.09.2011 made in SC No.2 of 2001 by the learned Chief Judicial Magistrate cum Special Judge, Tirunelveli.

2.The case of the prosecution is that de facto complainant approached the respondent Police and lodged a complaint against A-1 alleging that A-1 demanded Rs.1,000/- as bribe for the expenditure incurred by him in respect of an enquiry conducted by him in respect of the money transaction between the de facto complainant and one Ayyappan, and based on the complaint FIR was registered.

3.Based on the FIR [Ex.P.2], a trap was planned by the Trap Laying Officer- PW.17 (in short as 'TLO'). Two independent witnesses, were summoned by the TLO and the TLO explained about the complaint given by PW.2, to the independent witnesses and conducted a pre trap demonstration proceedings. PW.2 brought Rs.1,000/- (Rs.500 x 1 and Rs.100X5) and the serial number of the currencies were noted down in the entrustment mahazar [ExP.9] prepared by TLO and later coated the currencies with phenolphthalein powder and gave them to PW.2. The TLO instructed PW.2 to go and meet A-1 and if he demanded the money, then only he should give the money to the appellant. PW.3 was also directed to accompany with PW.2 and TLO instructed them to show signal, after accepting the money. Accordingly, on 11.01.2000 about 06.45 pm, the TLO, along with his team and PW.2 to PW.4 to the place of occurrence. The de facto complainant along with PW.3 went to the Police station, there A-1 to A-3 were present. A-2, asked PW.2 whether he had brought the money, PW.2 replied yes and A-2 asked to give the money and accordingly, PW.2 handed over money to A-2 and out of Rs.1,000/-, A-2 gave Rs.500/- to one Issaki Pandiyan, stating to settle the due to the tea shop and gave the balance Rs.500/- to A-3.

4.Then PW.2 came out and gave the pre arranged signal to the TLO. On receiving the pre arranged signal from PW.2, the TLO along with PW.4 and his team entered into the Police Station and introduced himself to accused and conducted phenolphthalein test and the result proved positive in respect of A-2 and A-3 and there was no colour change in the test conducted on A-1. Then the TLO recovered the tainted money through recovery mahazar and obtained signatures from the accused and independent witnesses. Then the TLO placed the matter before the Investigating Officer - PW.18. The Investigating Officer after conducting investigation laid a charge sheet against A-1 to A-3 for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 [herein after referred to as 'PC Act'] before the Chief Judicial Magistrate cum Special Judge, Tirunelveli.

5.On the side of the prosecution 18 witnesses as PW.1 to PW.18 were examined, 24 documents as Ex.P.1 to Ex.P.24 were marked and material objects as MO.1 and MO.2 were exhibited.

6.After completion of the prosecution side evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the accused and the same was denied as false. On the side of the accused, one witness was examined as DW.1 and 2 documents were marked as Ex.D.1 and Ex.D.2.

7.After completion of the trial and after hearing the arguments on either side, the Special Judge found that the prosecution has not proved the case against A-3 and acquitted A-3 from the charges that there is no material to show that A-3 had received the money knowing fully well that it was bribe money. The Special Judge, found A-1 and A-2 guilty under Sections 7 and 13(2) r/w 13(1)(d) of PC Act and convicted and sentenced each of them to undergo rigorous imprisonment for a period of three years and imposed a fine of Rs.2,500/-, in *default* to undergo simple imprisonment for a period of three months, for having committed each offence under Sections 7 and 13(2) r/w 13(d)(1) of PC Act.

8.Aggrieved against the conviction and sentence, the A-2 and A-1 have filed these Criminal Appeals respectively.

9.Since both these Criminal Appeals arise out of the same judgment, they are disposed of by way of this common judgment. For better understanding the parties are referred to their respective ranks in the trial Court.

10.These appeals have been filed in the year 2011. A-1 has filed a petition in CrlMP(MD)No.10213 of 2018 praying to direct the Chief Judicial Magistrate cum Special Jude, Tirunelveli to examine one Mr.Rahamathulla, S/o. Mohamed Yusuf as witness in Special Case No.2 of 2001, pending disposal of the main appeal.

11.It is to be noted, before the trial Court, after completion of the prosecution witness, questions under Section 313 of CrPC in respect of the incriminating circumstances were put before the A-1 and the same was denied. The case was posted for defence side evidence and DW.1 was examined and Ex.D.1 and Ex.D.2 were marked. But, the said Rahamathulla was neither summoned to depose nor petition under Section 91 CrPC to call for the documents. Then after closing of the trial judgment was delivered on 14.09.2011.

12.Further to be noted, A-1 has filed the appeal in Crl A(MD)No.300 of 2011 on 23.09.2011, wherein, ground 'h' reads as follows:

> *'The trial Court ought to have acquitted the appellant since according to the prosecution, out of Rs.1,000/- received from PW.2, Rs.500/- was paid to the Roja Hotel. The Investigating Officer (PW.18) has also seized the account book from the said Hotel. But, he neither produced the account book before the Court nor examined the hotel keeper as witness in the Court to corroborate the prosecution version.'*

13.Though such ground is raised, A-1 has neither filed any petitioner under Section 391 CrPC along with the appeal nor filed any petition within a reasonable time from the date of filing of the appeal. The appeal is pending for more than seven years and no such petition was moved by A-1 till recent past. The mater was listed on 12.11.2018. Subsequently, the matter was adjourned to 04.12.2018 and on 04.12.2018, the Vakalat for the appellants in both these appeals have been withdrawn and the matter was adjourned to 11.12.2018. On 05.12.2018, CrlMP (MD)No.10213 of 2018 has been filed praying to examine one witness, after the matter was posted under the caption 'For Disposal'.

14.In the said miscellaneous petition, it is stated that A-1 was under the impression that the witness sought be examined died and that he did not file any petition to examine him. He came to know that the witness is still alive, very recently. The witness has to be examined in order to prove his defence. No prejudice would be caused to the respondent by examination of the witness.

15.If at all he felt examination of the said person would be helpful to his defence, he could have filed a petition to examine him well in advance. But he has not done so. Neither he has summoned the witness nor did he get any report from the competent authority that the person is died. Further at the time of filing appeal itself, he has taken a ground regarding non examination of the witness and he was important witness. Thereafter too, he has not filed any petition within a reasonable time.

16.Thus, it is clear that the present miscellaneous petition is filed only to protract the appeal proceedings. Therefore, this Court is of the view that A-1 has not approached this Court with clean hands. If this petition is allowed, there is possibility for tutoring of witness and prejudice would be caused to the prosecution case.

17.Therefore, under such circumstances, this Court does not find any reason to allow this petition and the petitioner is not entitled to the relief sought for. The miscellaneous petition is dismissed.

18.Now this Court turns to the Main appeals : The learned Counsel for the A-2 submitted that the prosecution has not proved its case beyond reasonable doubt. The sanctioning authority has not applied his mind and the sanction has been accorded mechanically, therefore, the sanction itself is defective. The name of A-2 has not been included in the complaint as well in the entrust mahazar. But his name came to be used first time only before the trial Court during Evidence. PW.2 has deposed that A-2 demanded money at 4.00 pm on 10.01.2000, but the same has not been stated in the complaint and hence, the alleged demand made by A-2 is highly doubtful and thus, the prosecution has not proved the demand made by A-2. The time of giving the complaint at 11.00 am itself is doubtful, since the complainant was complying with a condition and report before a Police Station, which is situated 58 kilometres away. Above all PW.2 - the complainant himself was treated to be hostile. Therefore, the evidence and the complaint of PW.2 cannot be relied on by the prosecution. The trail Court has failed to take into account the same. There are many contradictions in the evidence of PW.2 the shadow witness in respect of their presence in the office. According to PW.3, PW.2 gave money to A-2 on the instructions of A-1, and A-2 handed over Rs.500- to A-3 to settle the account in the tea shop. There is no statement that A-2 retained Rs.500/- in his shirt pocket, but, the report says, the shirt pocket contained the sodium carbonate. Further, after the trap proceedings no statement was recorded from the accused, which is very violative of Vigilance Manual and no signature has been obtained from the accused. According to the TLO, in the FIR there is no demand made by A-2 from PW.2 and he has not examination whether PW.2 knew A-2. A-2 has given his written explanation, which explains the previous enmity between A-2 and the TLO. It has also to be noted that there are eight cases against PW.2 and he has also been convicted in one of those cases. According to PW.2, the demand was made by A-3, from whom Rs.500/- was recovered by the prosecution, but he has been acquitted from the charges and A-2 has been convicted by the trial Court on the same set of facts. Therefore, the trial Court has failed to considered that the demand has not been proved, there is no whisper about the demand in the complaint and FIR against A-1 and the prosecution has failed to consider these aspects. Hence, interference of this Court is warranted.

19.The learned Counsel for the A-1 submitted that the sanction for prosecution itself has been accorded mechanically. The trial Court has erred in convicting the appellant. It failed to take note of the fact that the complainant has involved in several criminal cases, which is evident from the deposition of PW.17 and PW.18. The trail Court failed to consider the fact that the tainted money was recovered only from A-2 and A-3 and not from A-1. But contrary to that the chemical analysis report says there was presence of sodium carbonate solution in the articles of this appellant. In the cross examination, the PW.2 replied that A-2 had not made any demand, but A-3 only made demand and such is the statement found in the complaint also. The time of preferring the complaint is contradicted by PW.2. Further, there is no possibility for giving such a complaint PW.12 had deposed that PW.2 signed in the Police Station, which is faraway from the Office of the respondent. Hence the very complaint itself is a doubtful one. The trail Court failed to note that there is no evidence to prove common intention among A-1, A-2 and A-3. There was enmity between this appellant and the PW.17, who is the TLO, hence, this appellant has been unnecessarily implicated in this case. The trial Court has failed to consider all these aspects and erred in convicting this appellant. Hence, the order of the trial Court has to be set aside. He also placed reliance on the following judgments:

1.**B.Jayaraj Vs State of AP, reported in (2014) 2 MLJ (Crl) 358 (SC);**

2.T.K.Ramesh Kumar Vs. State Through Police Inspector, Bangalore.

3.D.Amalraj Vs State through Inspector of Police,, reported in 2008 (1) TNLR 224 (Mad)(MB);

4.***R.Gunalan Vs. The State by Deputy Superintendent of Police, (2012) (3) CTC 38;***

5.State of Tamil Nadu, Vs. K.N.Ramesh, [in CrlA (MD)No.85 of 2011, decided on 27.04.2015]

20.The learned Government Advocate appearing for the respondent Police submitted that the prosecution has proved its case beyond reasonable doubt. The evidence of PW.2 clearly proves the demand made by A-1 and A-2 and the evidence of PW.2 and PW.3, prove the demand and acceptance on the date of occurrence. From the evidence of, PW.3 and PW.17, the prosecution has proved the recovery of money on the date of occurrence. The evidence of PW.14 and the chemical analysis report Ex.P.16 shows that the presence of the substance of Sodium Carbonate Solution. It is proved that A-1 demanded money from PW.2 and on his instructions A-2 accepted the money and gave the same to tea shop owner also. Though PW.2 had turned hostile, the complaint and the entire evidence of PW.2 cannot be ignored. There is evidence to the effect that A-1, A-2 and A-3 with common intention got illegal gratification for not registering case against PW.2. The Special Judge, has considered all the facts and circumstances of the case and after considering the oral and documentary evidence, has rightly concluded that the appellant committed the offence as mentioned above.

21.Heard Both sides. Perused the entire materials placed on record and the judgment of the Special Court.

22.A reading of the evidence of PW.1 shows that the Sanction Authority only after perusing all the materials and only after satisfying himself had accorded sanction. He further stated that there are reference about the trap proceedings and the result of the sodium carbonate test conducted on the accused. He also denied the suggestion without application of mind sanction was accorded. Therefore, there is no defect or illegality in issuance of sanction for prosecution.

23.The evidence of PW.2 shows that on 10.01.2000, A-1 demanded Rs.2,000/- from PW.1 stating that it was the expenditure for having done the enquiry in respect of a transaction between PW.2 and one third party. On 11.01.2000, when the PW.2 went along with PW.3, as instructed by the TLO, to meet A-1, A-2 asked whether he had brought the money as demanded. He replied yes. Then A-1 instructed PW. 2 to give the money to A-2 and A-2 in turn had received the money. Further he stated that during the trap proceedings, the TLO recovered the tainted money from A-2. Hence, it is clear that the demand made by A-1 and A-2 and on the instructions of A-1, A-2 knowing fully well that it was a bribe money, had accepted the same and further the same was recovered from him.

24.PW.3 namely Chandrasekaran, who was working as a Junior Assistant in the Office of the Joint Director of Agriculture, stated that on instructions from his Joint Director, he went to the Office of the Vigilance and Anticorruption Office, and met the TLO at where, the TLO had explained him about the complaint preferred by the PW.2 and he conducted pre trap demonstrations and the serial numbers of the currency notes were noted down by preparing entrustment mahazar and the phenolphthalein powder coated money was given to the PW.2 and the TLO instructed him to accompany with PW.2 and to watch at the time when PW.2 meets the appellant. Accordingly, they went to the office of the appellant and on seeing the de facto complainant, the appellant asked as to whether he brought Rs.3,000/- demanded by him. Then PW.2 gave the tainted money to the appellant, he received the money by his hands and kept in his shirt pocket and he demanded the balance amount of Rs.3,000/-. Then they came out and gave the pre arranged signal. Subsequently, he had spoken that TLO came inside the office of the appellant and conducted the phenolphthalein test on his hands, which proved positive and the comparison of the recovered money with the entrustment mahazar. He had spoken about the preparation of recovery mahazar also. So, from the evidence of PW.3, it is clear that the appellant had demanded and accepted the money and the same was also recovered. Therefore, demand, acceptance and recovery are proved from the evidence of PW.3 also.

25.PW.17 - TLO, who had deposed that he received a complaint against the appellant on 11.01.2000 from the de facto complainant that the A1 demanded bribe of Rs.1000/- for the expenditure in respect of an enquiry. After going through the complaint, he planned for a trap and summoned two independent witnesses and held pre trap demonstrations in front of the PW.2, PW.3, PW.4 and the independent witnesses and gave the phenolphthalein coated money to the PW.2 and instructed him to meet the appellant and to give the money, only if demand was made by the appellant and asked PW.3 to accompany with him and to watch the happening when they met and prepared the entrustment mahazar and they left the place and assembled near the office of the appellant. Further, PW.2 and PW.3 went inside the office of the appellant. He had further deposed about the receipt of the pre arranged signal from P.W.2, he along with his team went inside the office, PW.2 identified the A-1 to A-3 then PW.17 introduced himself and conducted phenolphthalein test , which proved positive and the money was compared with the entrustment mahazar and the same was matched and he recovered the tainted money through recovery mahazar and placed the matter before the Investigating Officer. Therefore, from his evidence the recovery of the tainted money is proved.

26.The evidence of PW.14, who was the Assistant in the Forensic Laboratory, who conducted the chemical analysis, shows the presence of the phenolphthalein in the solution through which the test was conducted, which is corroborated by EX.P.16.

27.The respective learned Counsel for the appellants submitted that there are many contradictions among the prosecution witnesses.

28.A reading of the entire materials placed on record shows that the above said contradictions are not material contradictions, which are not fatal to the case of the prosecution.

29.Even though, the appellants need not proves their defence by direct evidence, they can very well establish their defence from preponderance of probabilities or probable evidence. Whereas in this case, the appellants had made an attempt to do so, but failed to prove their defence in the manner known to law.

30.Though there is no dispute or quarrel in respect of the legal proposition in the citations referred to by the learned Senior Counsel for the appellants are not applicable to the case on hand, when the demand, acceptance and recovery are clearly proved with cogent oral and documentary evidence.

31. In view of the foregoing discussion, from the evidence of PW.1, PW.2, PW.3 , PW.4 and PW.14 and PW.16 along with Ex.P.1, Ex.P.2, Ex.P.9 and Ex.P.10 Ex.P.18 Ex.P.32, this Court finds that the prosecution has proved its case that the appellant had demanded illegal gratification and accepted it and the same was recovered from the appellant. In other words, the demand, acceptance and recovery are proved. There are no reasons to discard or disbelieve the prosecution witnesses and documents. The trial Court has elaborately appreciated the oral evidence and the materials and rightly convicted the appellant. Therefore, there is no reason to interfere with the judgment of the trial Court and the appeal is liable to be dismissed.

32.Further, a perusal of the judgment of the trial Court shows that the trial Judge has dealt with each and every aspect and has appreciated the evidence and documents in a perspective manner and rendered the judgment. Since there is no incriminating material against A3 and the prosecution failed to prove its case beyond reasonable doubt as against A3. The trial Court acquitted A3. The prosecution has proved its case beyond reasonable doubt as against the appellants herein and the trial Court convicted the appellants.

33.In view of the foregoing discussion, this Court does not find any merit in the appeal and the same is liable to be dismissed.

34.In the result, the present criminal appeals are dismissed and the judgment dated 14.09.2011 made in SC No.2 of 2001 by the Chief Judicial Magistrate cum Special Judge, Tirunelveli. is hereby confirmed.

Sd/-

Assistant Registrar (RTI)

/ True Copy /

Sub Assistant Registrar(CS-)

To

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

2.The Inspector of Police,
Vigilance and Anti Corruption,
Tirunelveli.

3.The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.**(2 Copies)**

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

+1 CC to M/s.M.RAMESH, Advocate (SR-42414[F] dated 23/01/2019)

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22.01.2019

ES/17.07.2019/9P/7C