

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2019

Pronounced on: 03.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.610 of 2019

State represented by:

The Inspector of Police,
V&AC, Kanchipuram.

[Crime No.16/AC/2010] ... Appellant/Complainant

Vs.

S.Raman

.. Respondent/ Accused

PRAYER: Criminal Appeal filed under Section 378(i) of the Code of Criminal Procedure, to allow the appeal and set aside the judgment of acquittal, dated 07.02.2019 in Special Case No.1 of 2012 on the file of the learned Special Judge cum Chief Judicial Magistrate Court, Chengalpattu and convict the respondent/accused as charged.

For Appellant : Smt.M.Prabhavathi
Additional Public Prosecutor
For Respondent : Mr.K.Srinivasan for
Mr.G.Saravanan

JUDGMENT

The State/appellant preferred this appeal against the judgment of acquittal in Special C.C.No.1 of 2012 rendered by the Special Judge/Chief Judicial Magistrate, Chengalpet dated 07.02.2019.

2.The appellant filed a charge sheet against the respondent for offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 examined PW1 to PW20 and marked the documents Ex.P1 to Ex.P25 and seized material objects MO1 to MO5. On the side of the defence no witness was examined by the respondent, marked Ex.D1 and Ex.D2. The trial Court on conclusion of trial acquitted the respondent by Judgment dated 07.02.2019 in Special C.C.No.1 of 2012, against which the present appeal.

3.The brief facts of the case is that the respondent was employed as Village Administrative Officer during the period

from 29.11.2006 to 12.07.2010. The defacto complainant/PW2 had purchased 1500 sqft of land with house bearing door No.18, Thiruvallur Street, Velingapattarai, Orikkaik Village. He wanted the property to be surveyed by Surveyor. When he approached the Surveyor, he was directed to approach the respondent/Village Administrative Officer to get computer patta. Based on the computer patta only survey of the land would be carried out. Ten days prior to 12.07.2010, the defacto complainant/PW2 approached the respondent and submitted the documents for computer patta. The respondent informed the defacto complainant/PW2 that he would inform when the patta would be made ready. The defacto complainant has given his mobile number and also taken the mobile number of the respondent. Thereafter on 12.07.2010, the defacto complainant/PW2 called the respondent through mobile to know about the status of patta. At that time the respondent informed the defacto complainant that the computer patta is ready and asked him to come and collect the same on payment of Rs.500/- as bribe. Not willing to pay bribe, the defacto complainant/PW2 lodged a complaint to the appellant who recorded his complaint [Ex.P2] and registered an FIR in Crime No.16/AC/2010 [Ex.P14].

4. Thereafter PW3 and PW5 were summoned to be witnesses for trap proceedings. PW3 and PW5 appeared before Saravanan, Inspector of Police, Vigilance and Anti Corruption, Kanchipuram. The trap laying officer explained the importance of trap, phenolphthalein test and pre-trap proceedings to them. On 12.07.2010 at about 03.30 p.m., when the defacto complainant/PW2 along with PW3 proceeded to the office of the respondent, the office was found locked. On enquiry the defacto complainant was informed that the respondent was residing in the next street corner. PW2 and PW3 went to the house of the respondent at about 03.45 p.m., the wife of the respondent informed that the respondent was taking rest and asked them to wait. At about 04.15 p.m., the respondent had come down and met PW2 and PW3. The defacto complainant enquired about the computer patta. The respondent demanded Rs.500/-, which was handed over by the defacto complainant. The respondent counted the money and kept in his left side shirt pocket. The computer patta was taken out from the table drawer and handed over to the defacto complainant. Thereafter, PW2 and PW3 came out and gave the pre-arranged signal, the trap laying officer Saravanan along with PW5 and other team members entered into the house of the respondent, enquired PW2 and PW3, who identified the respondent who received the trap money.

5. On enquiry the respondent became nervous and admitted the receipt of bribe money, phenolphthalein test was conducted on the hand of the respondent, which turned pink in colour, proved positive. The trap amount and the shirt of the respondent were

seized. PW4, the Deputy Tahsildar was summoned for post trap proceedings. Thereafter the tax receipt book and flag receipt book were seized, house search was conducted and the respondent was arrested.

6. In this case PW2 is the decoy, PW3 and PW5 are the official witnesses. PW3 was the witness for the trap and PW5 was the witness for pre-trap and post trap proceedings. PW4 is the Deputy Tahsildar and witness for post trap proceedings. PW6 is the Tahsildar who deputed PW4. PW7 and PW8 are the Village Assistants who are employed under the respondent. On 12.07.2010 they were deputed to Collectorate to receive the election materials, when they attempted to meet the respondent/VAO they were asked to wait outside. PW9 is the Scientific Officer attached to the forensic department who received the hand wash and the shirt pocket wash. The washes were subject to phenolphthalein test, which proved positive. Since the trap laying officer Saravanan passed away, PW10 took up the investigation. On the case diary of Saravanan, PW10 had deposed about pre and post trap proceedings. Thereafter, the investigation was handed over to PW10 who examined the witnesses, recorded the statements, collected the documents and after obtaining sanction for prosecution from PW1, he filed the charge sheet before the trial Court. The trial Court on conclusion of trial acquitted the respondent by Judgment dated 07.02.2019 in Special C.C.No.1 of 2012.

7. The contention of the learned counsel for the appellant/State is that the trial Court came to a wrong conclusion on the evidence of PW1 and Ex.P1/Sanction order on the ground that PW1 had perused the statement of the respondent/accused and further stated that in the sanction order it is not expressively mentioned about the perusal of case documents and application of mind. Further PW1 in his evidence stated that though he had received the statement and documents during July 2011, the sanction for prosecution was accorded on 29.07.2011. The statement of respondent was not produced. The recording of statement of accused by the trap laying officer is a guideline under the Vigilance Manual and non furnishing of the statements would no way affect the case of the prosecution. This Court in the case of Selvaraj and others Versus State reported in 2004 CrI.L.J. 3754, observed that "a non compliance of Vigilance manual causes no illegality. Hence, the trial Court ought not to have given too much importance for the same".

8. It is further submitted that the trial Court failed to look into the fact that on the respondent's explanation that Rs.500/- was received from PW2 towards arrears of tax and flag day collection. Such statement cannot be accepted in the absence of non production of any receipt for the same and it has to be

presumed that the respondent/public servant received the amount as bribe. The trial Court failed to look into the fact that PW2 decoy in chief examination had clearly stated about the demand, acceptance and recovery of bribe amount from PW2. Hence, the theory of tax dues or flag day collection are after thought.

9. PW3 the official witness had clearly stated about the demand, acceptance and recovery of trap amount and also the phenolphthalein test proved to be positive. The evidences of PW3 and PW5 corroborate each other. PW5, the other official witness has stated about the pre and post trap proceedings. The trial Court ought not to have rejected the testimony of trap witnesses and trap laying officer and investigating officer by adopting technical approach. The Hon'ble Apex Court in the case of State of Madhya Pradesh Versus Shri Ram Singh, held that "the overall public interest and social object has to be kept in mind while interpreting various Provisions of the Prevention of Corruption Act".

10. The lower Court failed to consider the evidence of PW9, the scientific officer forensic department and his report Ex.P13 which clearly proves the presence of Sodium Carbonate and Phenolphthalein powder on the hands of the respondent. PW4, the Deputy Tahsildar, witness to the recovery proceedings has clearly stated about the seizure of tax collection book and unfilled bill book from the respondent/accused. If the money had been received for the purpose of tax dues, the bill book ought to have been filled.

11. The trial Court acquitted the respondent by finding discrepancies in the evidence of PW2 and PW3 in handing over Rs.500/- for the purpose of tax arrears and for flag day collection. PW6, the Tahsildar had given a general statement that VAO's are directed to make flag day collection. This statement is only a general statement and the lower Court ought not to have given importance for the same.

12. It was further submitted that the Hon'ble Apex Court in the case of Rup Singh Versus State of Punjab held that "failure of accused to explain presence of phenolphthalein powder on his hand, there is nothing to doubt testimony of prosecution witnesses". Thus in this case the respondent failed to give any explanation during trap, on the other hand he was perplexed and shivering. Further in the case of Hazari Lal Versus the State (Delhi Administration), the Hon'ble Apex Court held that "the trap laid down by the police officer is found reliable, then, on the evidence of the police officer alone, the conviction is maintainable". Further, placed reliance in the case of madhukar Bhaskar Rao Joshi Versus the State of Maharashtra it is held that "presumption can be drawn, if public servant is found in

possession of currency notes, smeared with phenolphthalein and prosecution does not have further duty to prove beyond the fact that prosecution witness had paid the demanded money to the public servant". Further in the case of P.Krishna Pillai Versus State of Kerala it is held that "in a trap case, evidence of the witnesses who associated with the trap or the police officers who laid the trap cannot be brushed aside and if they are otherwise found reliable there is no need to seek independent corroboration to their evidence".

13.Further, the trial Court failed to give any reason in disbelieving the evidence of trap witnesses when it was found reliable and there is no need for any other corroboration. The basis ingredients of offence of payment, acceptance and bribe were proved in this case on the available evidence which is buttressed by the Judgment of P.Veeramuthu Versus State by Inspector of Police, V & AC, Salem.

14.In this case PW2 is the decoy witness who was accompanied by PW3. PW2 being a rustic villager his evidence has some abbreviations and lack of clarity, but PW3 the accompany official witness had categorically stated about the demand, acceptance and recovery. PW5 the other official witness has stated about the recovery and conduction of phenolphthalein test. PW9, the Scientific Officer from the Forensic Department had given his report that the hand wash and shirt wash proved positive. In this case, unfortunately, the trap laying officer Saravanan had passed away. PW10, the subsequent Investigating Officer who worked along with trap laying officer had clearly stated in his evidence about the entire trap proceedings and post trap investigation conducted by him. Thus, by cogent evidence the prosecution had proved the case. The lower Court on the minor discrepancies had acquitted the accused on the ground that the presence of PW2, PW3 and PW5 were doubtful during the trap on 12.07.2020. The office order and letters/Exs.P11, P15 to P17 in summoning the official witness PW3 and PW5 for the trap are contrary to the case of the prosecution.

15.Hence, he prayed this Court to set aside the Judgment of acquittal rendered by the learned Special Judge/Chief Judicial Magistrate, Chengalpet, dated 07.02.2019 in C.C.No.1 of 2012.

16.The learned counsel for the respondent/accused submitted that PW2 the decoy in his evidence had not stated any demand of bribe amount. The demand is a sine qua non in a case of trap. In this case the basic foundation of demand is not there. Further PW2 in his evidence had categorically stated that he had given a oral complaint which was recorded by Saravanan Trap Laying Officer a day after the trap i.e., on 13.07.2010. Thus, the time and manner that the complaint Ex.P2 coming into existence

becomes doubtful clouded with mystery which would cut the root of the case and the very foundation of the case viz., FIR Ex.P14 becomes highly doubtful. PW2 admitted that he had given only oral complaint which was written down by Trap Laying Officer Saravanan. In this case the said Saravanan could not be examined since he had passed away during trial. The prosecution had not attempted to take steps by way of re-examination to clarify this point. Further, PW2 in his evidence admitted that the amount of Rs.500/- was handed over for arrears of tax.

17.It is further submitted that it is an admitted case that the property was purchased in the year 2000 from one Bargunan. From the year 2000 to 2010, PW2 had not paid any tax and he was in arrears of tax. PW2 has stated that as soon as he handed over the money, the trap laying officer with team entered into the room and caught hold the respondent, giving no time for the respondent to issue a tax receipt. Fortified with the evidence of PW4, the deputy Tahsildar who categorically stated that unfilled tax receipts were available with the respondent which were also seized. Thus without giving any time the appellant had caught hold the respondent and implicated him in this case.

18.Further PW1/the Sanctioning Authority clearly has stated that the statement of respondent was available and he perused the same. The statement of the respondent was withheld by the appellant since it would affect the case of the prosecution. Further PW2 in his evidence had never stated that there was any demand of bribe. PW2 in his evidence has stated that he and the respondent exchanged mobile numbers. He contacted the respondent over mobile phone and enquired about progress of the computer patta. PW10 the investigating officer admitted that the mobile phone particulars were informed by PW2 and he collected the same. Though PW10 collected the particulars of the mobile phone, he had not produced the same before the trial Court. Hence, the adverse inference under Section 114(g) of Indian Evidence Act, 1872, has to be drawn.

19.It is further submitted that PW3 and PW5 are the official witnesses. PW3 was employed as Senior Auditor in the Cooperative Department. PW3 cooperative Sub Registrar was directed to appear before Vigilance Officer at about 02.00 p.m., on 12.07.2010, where PW3 and PW5 were to be briefed about the importance of trap proceedings. Thereafter, PW3 along with PW2 had gone to the office of the respondent, thereafter, to his residence, wherein the trap amount was demanded by the respondent and handed over. Though PW3 stated that the respondent demanded money from PW2 for issuance of computer patta, PW2 does not mention about the same in his evidence. In the absence of PW2 not mentioning of this fact, the evidence of PW3 becomes highly doubtful. The sine qua non of demand is absent. PW3 admitted that on 12.07.2010, his superior

officer/Assistant Director informed him at about 11.05 a.m., that he has to report before Vigilance Officer on 12.07.2010. Likewise PW5 also admitted that on 12.07.2010 at about 10.05 a.m., he was served with the communication to appear before the Vigilance Office. In the said communications/Exs.P15 and P16 the Crime No.16/AC/2010 is available, but the FIR in this case is registered at 12.00 noon on 12.07.2010. The genesis of FIR becomes doubtful. Thus the veracity of the complaint followed by registration of FIR, pre-trap proceedings and post trap proceedings all are colluded with mystery and becomes highly doubtful.

20.The neutrality of PW3 and PW5 becomes questionable. Fortified with the fact that Ex.D1 and Ex.D2 are diary proceedings submitted by PW3 and PW5, wherein PW3 has recorded that on 12.07.2010 from morning 08.00 a.m., to 09.00 p.m., he was in the office of Vigilance. PW5 has recorded in his diary that morning 09.00 a.m., he started from Katrankulathur and returned only at 10.00 p.m. There is no mention whether they attended the Vigilance Office for any proceedings. The respondent on the materials available and by marking documents Exs.D1 & D2 had probalized his defence.

21.Thus in this case the trial Court after fulfilled trial on examination of witnesses, analyzing the evidence and documents, finding that the evidence of witnesses does not inspire confidence acquitted the respondent by giving benefit of doubt, which need not be interfered with.

22.In order to substantiate his arguments, the learned counsel for the respondent relied upon the following citations:-

1.Kashiram and others Versus State of Madhya Pradesh reported in (2002) 1 SCC 71 in which it is held as follows:-

"Though the High Court while hearing an appeal against an acquittal has powers as wide and comprehensive as in an appeal against a conviction and while exercising its appellate jurisdiction the High Court can reappraise the evidence, arrive at findings at variance with those recorded by the trial court in its order of acquittal and arrive at its own findings, yet, the salutary principle which would guide the High Court is - if two views are reasonably possible, one supporting the acquittal and the other recording a conviction, the High Court would not interfere merely because it feels that sitting as a trial court its view would have been one of recording a conviction. It follows as a necessary corollary that it is obligatory on the High Court while reversing an order of acquittal to consider and discuss each of the reasons given by

the trial court to acquit the accused and then to dislodge those reasons. Failure to discharge this obligation constitutes a serious infirmity in the judgment of the High Court."

2.Chandrappa and others Versus State of Karnataka reported in (2007) 4 SCC 415, in which it is held as follows:-

"The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court."

23.Considering the rival submissions and on perusal of the materials, following the principles regarding powers of the appellate court in dealing with an appeal against an order of acquittal, proceeds to analysis the evidence available. If two views are possible on the basis of evidence on record and favourable one to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.

24. In this case PW2 is the decoy witness who has not mentioned about any demand. The demand of bribe is sine qua non in a case of trap. Admittedly, in this case there is no demand. The demand has to be followed by acceptance, thereafter, recovery. In this case PW2 admitted in his evidence that he had purchased the property from Bargunan in the year 2000 and for the past ten years he has not paid the tax dues and the amount of Rs.500/- was handed over to the VAO towards the same. PW2 further stated that immediately after handing over Rs.500/- the trap team pounced on the respondent. PW4 the Deputy Tahsildar witness for the post trap has stated that the tax receipt book and bill book were seized from the respondent. PW2 stated that he had given a oral complaint [Ex.P2] which was recorded by Saravanan Trap Laying Officer. Unfortunately in this case, the trap laying officer passed away during trial. Hence, the veracity of recording Ex.P2 could not be tested. PW2 is certain that the trap was conducted on 12.07.2010 and the next day only on 13.07.2010 he had gone to the office of the Vigilance and given his oral complaint. Hence, the complaint coming into existence in the manner projected becomes doubtful, fortified with the fact that in Exs.P15 & P16/requisition letters for PW3 and PW5 to be witnesses for the trap, the Crime No.16/AC/2010 dated 12.07.2010 is available and these communications had reached the office of PW3 and PW5 by 10.30 a.m. when they were informed to report before the appellant and the FIR in this case came to be registered at 12.00 noon.

25. Further it is seen that Exs.D1 & D2 would prove the fact that PW3 and PW5 are not speaking truth and their independency and integrity of being an independent witness becomes a questionable one. PW1 the sanction witness has stated that he perused the statement of the respondent before according sanction. This statement of the respondent was withheld and was not produced during trial. PW2 admitted that he and the respondent exchanged their mobile numbers and they were in touch with each other through mobile phone. PW2 was informed to come and collect the computer patta over mobile phone. PW10 the investigating officer admitted that the mobile phone particulars was provided by PW2. Though mobile phone particulars were collected by PW10 they were not produced in this case. Hence there have been withholding of evidence. It is to be seen that Ex.P6/seizure mahazar was prepared by PW10 Gangaderan, part of the trap team. The same PW10 Gangaderan was entrusted with post trap proceedings which cast doubt about the independent nature of investigation. Hence, the trial Court has given a well reasoned Judgment of acquittal which need not be interfered with.

26.In view of the same, this Court finds that there is no reason to interfere with the Judgment of acquittal passed by the learned Special Judge cum Chief Judicial Magistrate, Chengalpet in Special C.C.No.1 of 2012 dated 07.02.2019. Hence, the finding of the trial Court is confirmed. In the result, this Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge cum Chief Judicial Magistrate Court,
Chengalpattu.

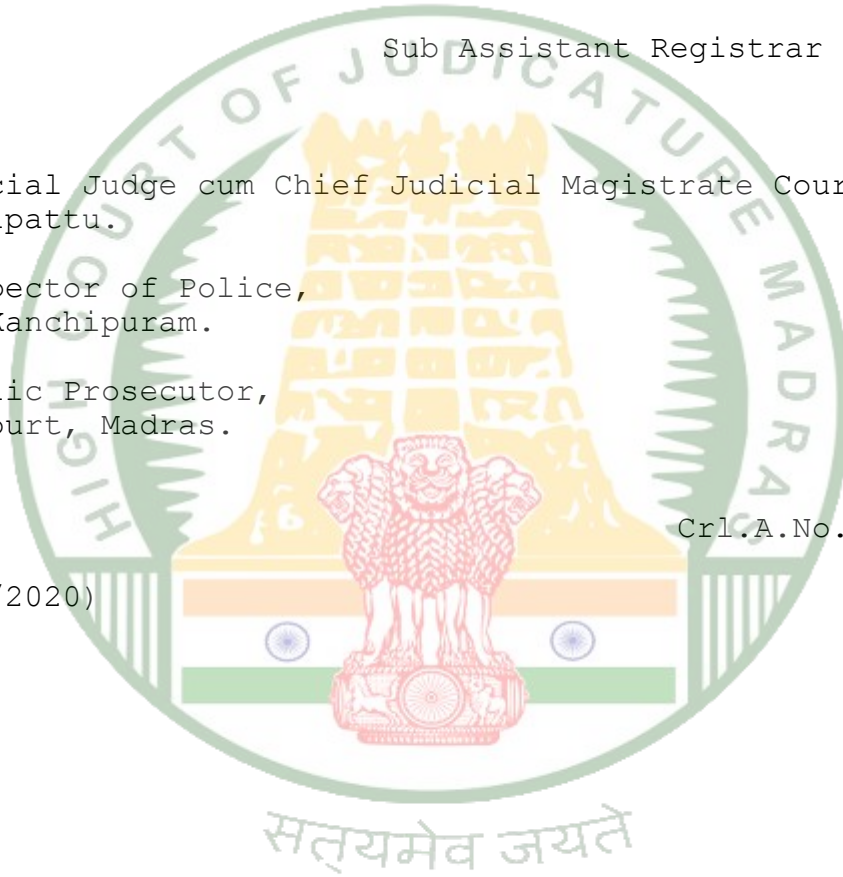
2.The Inspector of Police,
V&AC, Kanchipuram.

3.The Public Prosecutor,
High Court, Madras.

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