

BAIL SLIP

M.Noordheen, male aged 66/2014 Accused No.1, was released on bail vide court order dated 30.07.2014 in MP(MD).1 of 2014 in CRL A (MD).225 of 2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD).No.225 of 2014

M.Noordheen (A1),
Formerly Deputy Director of
Fire and Rescue Services,
Southern Region,
Madurai.

... Appellant/Accused

Vs.

The State rep. by,
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai.
(Crime No.7 of 2003)

... Respondent/Complainant

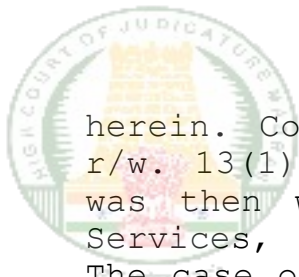
PRAYER : Criminal appeal is filed under Sections 374(2) of Cr.P.C., to call for the records relating to the Judgment dated 4th July 2014 made in Special Case No.61 of 2011 on the file of the Special Court for Prevention of Corruption Act, cases Madurai and set aside the conviction and sentence imposed against the appellant/accused and allow the above appeal by acquitting the appellant/accused.

For Appellant	: Mr.V.Gopinath, Senior Counsel, for Mr.UM.Ravichandran.
For Respondent	: Mr.A.Robinson, Government Advocate (Crl.Side)

JUDGMENT

This appeal is directed against the Judgment dated 04.07.2014 made in Special Case No.61 of 2011 on the file of the Special Court for Trial of P.C. Act Cases, Madurai.

2. The respondent herein while investigating the case in Crime No.7 of 2003 filed a second charge sheet against the appellant
<https://hcservices.ecourts.gov.in/hcservices/>



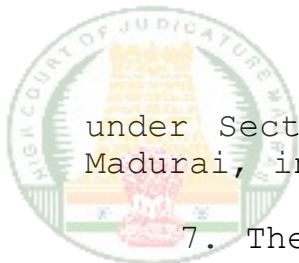
herein. Cognizance was taken for the offences under Section 13(2) r/w. 13(1)(a) of Prevention of Corruption Act, 1988. The appellant was then working as Deputy Director, Tamil Nadu Fire and Rescue Services, Southern Region, Madurai, from 14.02.2003 to 29.09.2003. The case of the prosecution is that during this period, the accused habitually obtained illegal gratification from various officials. Charge was framed against the appellant under Sections 13(2) r/w. 13(1)(a) of Prevention of Corruption Act, 1988. The appellant denied the charge and claimed to be tried. The prosecution examined as many as eight witnesses and marked Ex.P.1 to Ex.P.6. On the side of the accused, Ex.D.1 and Ex.D.2 were marked. The learned trial Judge after a consideration of the evidence on record, found the accused guilty of the offence with which he was charged and sentenced him to undergo Rigorous Imprisonment for two years. The fine amount of Rs.5,000/- was also levied. Default sentence was also imposed. Questioning the same, this appeal came to be filed.

3. Heard the learned Senior counsel appearing for the appellant and the learned Government Advocate(Crl. Side) appearing for the respondent.

4. The learned Senior counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and submitted that the impugned Judgment deserves to be set aside and appellant has to be acquitted and the appeal allowed.

5. Per contra, the learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not call for any interference and wanted this Court to dismiss the appeal.

6. In support of the charge, the prosecution examined one Pandi as P.W.2. The said Pandi was working as Station Fire Officer in Tiruchuli Fire Station. He deposed that on 20.05.2003, the Assistant Divisional Officer, Thiru.Ilango contacted him over phone and instructed him to meet the accused who was said to be staying at the guest house in Virudhunagar. P.W.2 deposed that he met the accused at around 9.00 p.m. in the guest house. During the said meeting, the accused is said to have demanded a sum of Rs.1,000/-. P.W.2 claims that he complied with the said request. Subsequently, on 29.07.2003, the accused came to Aruppukottai Fire Station for annual inspection. He had sent a word through one Thiru.Perumal to P.W.2 to meet him. When P.W.2 met him on the said date at around 9.00 p.m., the accused is said to have demanded a sum of Rs.5,000/- as bribe for regularising his service. P.W.2 states that he handed over a sum of Rs.2,500/- to one Razak who was working as driver for the accused. The accused is said to have sent word to P.W.2 through one Thiru.Chandrasekar, Station Writer, on 15.08.2003 to meet him. When on 16.08.2003 at about 9.00 a.m. P.W.2 met the accused, the accused demanded a sum of Rs.10,000/- for favourably considering the request for transfer already made by P.W.2. P.W.2 also gave a statement



under Section 164 of Cr.P.C. before the Judicial Magistrate No.I, Madurai, in this regard.

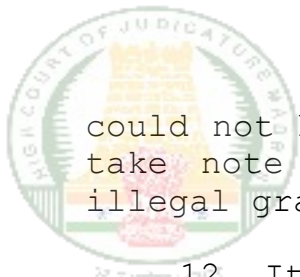
7. The question is whether the testimony of P.W.2 can be taken at its face value. There is complete lack of corroboration. Thiru.Ilango, Assistant Divisional Officer who is said to have passed on the message from the accused to P.W.2 on 20.05.2003 was not examined as a witness. Similarly, there has been no examination of Thiru.Perumal and Thiru.Chandrasekar who were said to have passed on the information on the subsequent occasions.

8. P.W.3 Selvendran was working as Station Fire Officer in Sivakasi in the year 2002. There was a fire accident in Sivakasi on 04.07.2003. To conduct an inspection in that regard, the accused came to Sivakasi on 21.07.2003. He came to Sivakasi Fire Station in the evening at about 5.30 p.m. At that time one Durairaj informed P.W.3 that the accused is demanding a colour T.V. as gift. P.W.3 would claim that such a T.V. was purchased from his brother-in-law's shop and delivered to the accused subsequently. Murugan, the driver who is said to have effected delivery of Onida colour T.V. was examined as P.W.4. P.W.5 turned hostile. P.W.6 was the Judicial Magistrate who recorded the statements of the various witnesses under Section 164 of Cr.P.C. P.W.7 Thiru.P.Mohan was the investigation officer and it was he who recorded the statements of the various witnesses. P.W.8 filed final report after obtaining sanction.

9. As rightly pointed out by the learned Senior counsel appearing for the accused, the testimony of P.W.2 to P.W.4 should receive some corroboration. In this case, there is absolutely no corroboration. The colour T.V. in question was not at all recovered. P.W.2 and P.W.3 did not lodge any complaint immediately after the demand was made by the accused officer. They had chosen to remain silent. Only during the course of investigation into another case against the accused, P.W.2 to P.W.4 were examined and it was then, they had stated about the demand and payment of illegal gratification.

10. Section 13(1)(a) of Prevention of Corruption Act will be attracted if a public servant habitually accepts illegal gratification. In the case on hand, the prosecution has projected only two witnesses. The question that arises is whether this would amount to habitual acceptance of illegal gratification. Since the prosecution case is totally bereft of any corroboration, I am of the view that it would be most unsafe to predicate the finding of guilt on the testimony of P.W.2 to P.W.4.

11. The Court below has chosen to take the testimony of these witnesses as gospel truth. The Court below ought to have looked for corroboration. The statement recorded under Section 164 of Cr.P.C.



could not have been marked as Ex.P.6. The Court below has failed to take note of the enormous delay between the alleged demand of illegal gratification and recording of statements.

12. It is necessary to emphasise that at no point of time these witnesses lodged any formal complaint or information before the police. Their statements were incidentally recorded while conducting investigation into another case. Therefore, in such a background, corroboration was absolutely necessary. In the absence of corroboration, the Court below could not have found the accused guilty.

13. In this view of the matter, the Judgment impugned in this criminal appeal stands set aside. The appellant is acquitted. This criminal appeal stands allowed. The bail bond, if any, executed by the appellant shall stand cancelled and the fine amount, if any, paid by him, is to be repaid to him.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Judge,
Special Court for Prevention of Corruption Act,
Madurai.
2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer, Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai(2 copies).



CRL.A.(MD)No.225 of 2014

+1 CC to M/s.AJIMATH BEGAM, Advocate SR.No. 25078

CRL.A.(MD).No.225 of 2014
09.12.2020

TP(CO)

TR(09.03.2021) 5P 7C