



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 10.12.2019
JUDGMENT DELIVERED ON : 07.01.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.(MD)No.231 of 2014

The State represented by
The Public Prosecutor,
High Court, Madras
(V& A.C. Ramanathapuram,
Crime No.5 of 2005)

... Appellant /Complainant

Vs.

G.Kaleeswaran

... Respondent /Accused

PRAYER : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused passed in Special C.C.No.7 of 2007, dated 22.01.2014 by the Special Court/Chief Judicial Magistrate, Ramanathapuram and convict the respondent/accused for the charges framed against him in the interest of justice.

For Appellant : Mr.M.Chandrasekaran,
Additional Public Prosecutor
For Respondent : Mr.R.Gandhi

JUDGMENT

This Criminal Appeal is arising out of acquittal of the accused passed by the Special Court/Chief Judicial Magistrate, Ramanathapuram, in Special C.C.No.7 of 2007, dated 22.01.2014, and convict the appellant.

2. The brief facts of the case, as projected by the prosecution are as follows:

2.1.In this case, the *defacto* complainant, namely, Janakiraman, applied passport in the year 2005 and the same was forwarded by the Superintendent of Police, Ramanathapuram to Kenikarai Police Station, where the respondent was Head Constable. For the purpose of enquiry and to ascertain the proof of the applicant, the respondent went to the shop of the *defacto* complainant (P.W.2), on 02.04.2005, enquired him and asked for the residential proof by way of Village Administrative Officer's certificate. He demanded a sum of Rs.300/- as bribe for the same.



2.2.The defacto complainant accepted to pay the amount by 04.04.2005. Thereafter, on 04.04.2005, again the respondent had gone to P.W.2's shop, demanded the bribe money as well as asked for the address proof. At that time, P.W.2 sought some time to make the payment. Again on 05.04.2005, the respondent went to P.W.2's shop and asked for the money at about 09.30.am., the defacto complainant (P.W.2) expressed his inability to pay the amount immediately, at that time the respondent scolded him and compelled him to make the payment on 06.04.2005.

2.3.Thereafter, on 06.04.2005, the defacto complainant (P.W.2) approached the police official (P.W.15), namely, Gnanathesigan, who was working in Vigilance and Anti Corruption Wing, Ramanathapuram, gave a compliant. P.W.15 registered a case in Crime No.5 of 2005 for the offence under Section 7 of Prevention of Corruption Act, 1988.

2.4.Thereafter, P.W.15 summoned witnesses P.W.3, Veerasingam, who was employee of Panchayat Union, Paramakudi and one Ramakrishnan. Thereafter, pre-trap proceedings were conducted, explaining significance of Sodium Carbonate test to P.W.2, P.W.3 and Ramakrishnan.

2.5.P.W.2 along with P.W.3 had gone to the shop of P.W.2. At that time, the respondent came there and demanded money. P.W.2 handed over the trap money of Rs.300/-. The accused received the amount from P.W.2, counted the same with both hands, suddenly, he saw the police official, threw away the cash. P.W.15 reached there and one Head Constable was asked to stand guard there for safety of amount, which was thrown away by the accused. Thereafter, P.W.15 conducted the phenolphthalein test on the hands of the respondent/accused. P.W.15 prepared Sodium Carbonate Solution in two glasses and asked the respondent/accused to dip his fingers in the glasses. The respondent /accused dipped both hands, the water turned to light Pink colour. P.W.15 collected sodium carbonate solution in separate bottles, sealed them, the signature are marked as Ex.P.3 and Ex.P.4.

2.6.Thereafter, they recovered the tainted money from the accused and the same was marked as M.O.1. In the presence of prosecution witnesses, the numbers found in recovered notes were compared with entrustment mahazar and verified. Both the witnesses confirmed that the numbers of the recovered notes and the numbers found in the entrustment mahazar were tallying. The investigation was taken over by the Inspector of Police, namely, Mr.R.Muthuraman (P.W.16).

2.7.On 02.04.2005, P.W.3, Ramakrishnan, Hyder Ali, Kesavan and others' statements were recorded. On 07.04.2005, the defacto complainant Janakiraman and P.W.6 Pasupathi were examined and statements were recorded. Thereafter, on completion of

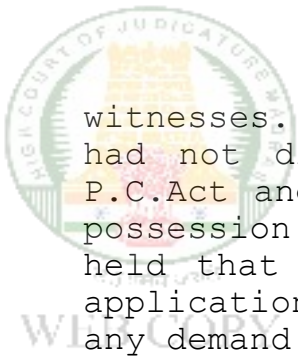


investigation, since he was retired from service, he handed over the case diary to P.W.17. P.W.17, Ponnambalam, who is the subsequent investigating officer obtained sanction from P.W.1 and filed charge sheet in this case.

3.The contention of the learned Additional Public Prosecutor appearing for the State is that the lower Court had failed to appreciate the evidence of witnesses in its right perspective and had gone by the written and oral argument advanced by the accused, which were contra to the evidence available. The motive projected as though at the instance of one Periyasamy, Head Constable attached to Vigilance and Anti Corruption Unit, on whose instigation, a case has been registered and prosecuted against the respondent is farfetched. The case has been registered after getting approval from the Deputy Superintendent of Police by an Inspector of Police and the Inspector of Police viz., P.W.15, the Trap Laying Officer, had independently taken the service of the government witnesses, prepared trap and successfully completed the trap proceedings. Thereafter, P.W.16 another Inspector of Police had taken up the investigation, recorded the statements, collected documents and on his superannuation, P.W.17 another Inspector, obtained sanction for prosecution and filed the charge sheet. The said Periyasami is only a Head Constable and the investigation officers are placed above him and there is no reason for these officers to have obliged or acted at the instance of the said Periyasami. The respondent neither examined any witnesses nor produced any documents to substantiate his case. The lower Court had placed too much emphasis in this regard without any material.

4.The learned Additional Public Prosecutor further submitted that the defacto complainant turning hostile would not amount to totally reject the case of the prosecution. The purpose of examining the accompanying witnesses is to corroborate as well as to prove the fact of the trap. P.W.3 is an Assistant in Paramakudi Panchayat Union, who is an official witness and he is an independent witness. Neither he is the man of the defacto complainant nor the man of the Trap Laying Officer. P.W.3 had stated about the demand, acceptance and recovery of the trap money from the respondent and his presence along with P.W.2, preparation of entrust mahazer and recovery mahazer. These facts have not been properly appreciated by the lower Court.

5.He further submitted that the lower Court failed to look into the fact that the verification of passport application is carried out by the Head Constable and thereafter, the report has to be forwarded by either to the Sub Inspector of Police or Inspector of Police as per the circular and guidelines. It is to be noted that on the date of trap, from the side box of the motor bike, 5 other passport applications were recovered and it has been recorded in the recovery mahazer. Failing to look into this fact, the lower



witnesses. The lower Court failed to consider that the respondent had not dislodged the statutory presumption under Section 20 of P.C.Act and no reason has been given how the tainted money came in possession of the respondent. On the other hand, the lower Court held that the respondent is not empowered to verify the passport applications and hence, there is no case of the respondent making any demand and there is no order to show.

6.The learned Additional Public Prosecutor submitted that the lower Court failed to look into the fact that the respondent in this case is from the police department and naturally, the witness, who spoke about his nature of work and other aspects have to be elicited only through police personnel. The lower Court failing to look into that aspects had categorized the witnesses and had stated that in this case, P.Ws.1, 5 to 11 and 15 to 17 are all police witnesses and their evidence create suspicion, which is not proper. Further given finding that the non examination of Anandhan, who had prepared Ex.P33, observation mahazer in the scene of occurrence, where the tainted money were recovered is fatal. Failing to look into the fact that P.Ws.3 and 15 are the other witnesses, who have signed the same and spoken about the same. Likewise, the same reason has been given with regard to Ex.P33. It is not necessary that all the witnesses to the documents have to be examined. The lower Court placed too much reliance on non seizure of the motor bike used by the respondent. This case pertains to demand and acceptance and recovery of the bribe amount and the trap amount had been recovered as could be seen from the recovery mahazer.

7.The learned Additional Public Prosecutor submitted that the minor contradictions which were trivial in nature have been given undue consideration and thereby disbelieved the case of the prosecution, which is against the established consequences. He further submitted that in this case, with regard to the verification of the passport, P.Ws.4 to 6, 8 and 9 were examined and they state about the procedure. The respondent taken up the application form of P.W.2 for verification. Further, in this case, the respondent had made demand on 4 occasions from 02.04.2005 to 06.04.2005. Further, the respondent had not given any explanation after his arrest or questioning under Section 313 Cr.P.C. The defence taken by him is that no money was recovered from him, failing to look into the fact that the phenolphthalein test found positive. In support of his contention, he relied on the following citations:

1. (2009) 15 SCC 200 - State of Maharashtra V. Dnyaneshwar Laxman Rao Wankhede;

2. Crl.A.No.618 of 2012 - Mukhtiar Singh V. State of Punjab;

3. (2001) 1 SCC 691 - M.Narasinga Rao Vs. State of A.P.

4. Crl.A.No.1208 of 2019 - Guruviah Vs. State rep. by Inspector of Police

5. Crl.A.No.194 of 2009 - State represented by Vs.

P. Kannusamy

<https://hcservices.ecourts.gov.in/hcservices/>

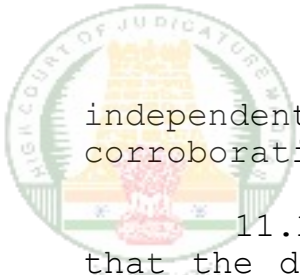


6.(1982) 3 Supreme Cases 466 - Kishan Chand Mangal Vs. State of Rajsathan.

8.The learned counsel appearing for the respondent would submit that in this case, the defacto complainant viz., P.W.2 had not spoken anything about demand on the point of time, acceptance and recovery. Though the prosecution would state that the demand was initially made on 02.04.2005, thereafter on 05.04.2005 and 05.04.2005 and on the date of trap viz., 06.04.2005, in support of the same, P.W.4 was examined, he has not supported the case of prosecution. In a case of trap, the *sine quo non* is the demand. In the absence of demand, there cannot be any case to proceed against the respondent. The witnesses to the trap are one P.W.3 Veerasingam, Assistant, Panchayat Union, Paramakudi and one Ramakrishnan, Handloom Inspector, Office of the Assistant Director (Handlooms and Handicrafts), Paramakudi. However, the said Ramakrishnan has not been examined as witness in this case.

9.He further submitted that with regard to the entrustment, P.W.3 along with Ramakrishnan had been witnesses. In the entrustment mahazer, there is no mention about the demand made by the respondent. Further, there is a clear mention that if P.W.2 was willing to pay the bribe money, he could handover the bribe amount. Thus, there is no certainty about the demand and aggrieved against the same, P.W.2 had lodged the complaint. Further, as per the recovery mahazer, it is seen that nowhere, the defacto complainant has mentioned about the respondent who demanded money and received the same. Though there is mention about the respondent throwing away the money and attempted to run away, none of the witnesses have spoken to about seeing the respondent attempting to run away.

10.The learned counsel appearing for the respondent further submitted that it has been clearly explained that the respondent was forced to handle the trap money and thereafter, the phenolphthalein test proved positive and no significance could be placed. The certain case of the prosecution is that from 02.04.2005, the respondent was making demand of Rs.300/- for residence proof. P.W.2 had not obtained VAO certificate and hence, he was asking time. If that being the case, there was no reason for the respondent to go on 06.04.2005 since, even on that day also, VAO certificate was not made ready. P.W.3 in his evidence had not mentioned about any demand made by the respondent. P.W.3 admits that he was called by the appellant for collecting some documents from the office and there, he was asked to stand as an witness. When the same was questioned by P.W.3, he was forced threatened and fearing the action from the Vigilance and Anti Corruption, he had to toe the line of the appellant and hence, he could not be stated to be a credible independent witness. He admits that on the compulsion of appellant, he stood as witness and he could not depose against the dictum of appellant. Therefore, in this case, P.W.3 cannot be stated to be an



independent credible witness and in the absence of any corroboration, his evidence cannot be acted upon.

11.He further submitted that P.W.1, sanction witness admits that the draft sanction order was sent along with the proposal for seeking sanction and based on the draft sanction order, he accorded sanction. In view of the same, it cannot be stated that the sanction was accorded in unbiased manner on independent application of mind. He admits that in the sanction order, there is no mention about the independent satisfaction. It has been suggested to him that he had mechanically signed based on the draft sanction order. Further, he admits that the passport verification has to be completed within a period of 7 days and if there is any delay, explanation would be sought for. In this case, the application is dated 21.03.2005 and after much delay, the verification has been carried out and the delay is attributed due to non furnishing of the requisite documents by P.W.2. Even on the date of trap, he has not produced the residential certificate to be issued by VAO.

12.The learned counsel appearing for the respondent further submitted that P.W.2 admits that the appellant had questioned the delay in obtaining VAO certificate and he was harsh in his words. Nowhere, he has stated that there were any demand of bribe. In his chief examination, prior to he being treated hostile, he has categorically stated that while lodging the complaint, he had mentioned only about the delay of the appellant and he was unable to get the VAO certificate for which the appellant refused to record the same in the complaint and directed P.W.2 to write the complaint as dictated by them. Hence, the complaint loses its credibility. His only grievance is that the respondent used harsh words against him.

13.He further submitted that P.W.3, the accompanying witness as stated above, is not an independent willing witness and he was compelled to stand as witness and toe the line of the appellant. His categorical version is that the respondent on coming to the shop of P.W.2 has stated as follows: “ஜானகிராமனைப் பார்த்து நான் சொன்னதை ரொட பண்ணி விட்டேன் என்று கேட்டார். ரொடியாக இருக்கிறது வாங்க சார் என்று சொன்னார்.” Nowhere, it is stated that the respondent had demanded any bribe money and it is the admitted case that VAO certificate was getting delayed and in all probability, it was enquiry with regard to the VAO certificate.

14.He further submitted that P.W.2 defacto complainant admits that as he attempted to thrust the money in the hands of the respondent, the respondent flung it away. Though the entrustment mahazer was prepared on the same day 5.45. pm., it concluded only on 08.20 p.m and no reason was given for the inordinate delay. This delay is only to facilitate and confirm the trap according to the dictum of the appellant. P.W.2 had not supported the case of prosecution.



15.Added further, P.W.5 is the Head Constable attached to the Kenikkarai Police Station. Like wise, P.W.7, Sub Inspector of Police, P.W.8, Sub Inspector of Police, P.W.9 Head Constable, P.W.10 another Head Constable and P.W.11 Inspector of Police are all from Kenikkarai Police Station. Their evidence is to the effect that they used to go and collect tapals from the Office of the Superintendent of Police and thereafter, the same would be handed over to the concerned officers to make verification and after verification, the report would be made ready by the Sub Inspector of Police and above, the same would be forwarded to the Superintendent of Police. The verification of the address proof based on the VAO certificate is one of the important certificate of verification and the entire verification has to be conducted within a period of one week. But, since there was huge pendency, the delay was acceptable. But, on the date, when the alleged demand is said to have been made, the respondent was assigned other duties such as for collecting wound certificates and attending Pay and Accounts Office.

16.He further submitted that P.W.6, Assistant of the Office of Superintendent of Police speaks about the application forms of passport verification are despatched through records and thereafter, collected by entries made in the register. All these witnesses including the sanction witness admit that the person empowered to give positive report or negative report is the Sub Inspector of Police and above. The respondent has got no authority to give any verification report. The respondent submits that P.Ws.12 and 13 are the Head Clerk of the Court and the Scientific Officer of the Forensic Department respectively. They speak about the phenolphthalein test. P.W.14 is a father of another person, who applied for passport. He was examined to state that the appellant was in the habit of collecting extra money. This witness had not supported the case of prosecution and the prosecution has miserably failed to prove the case.

17.Further, P.W.15 is the Trap Laying Officer, who admits that the complaint was received by 11.00 a.m. and by 12.00 noon, he registered the FIR and he had not made any discreet enquiry and mechanically, he registered the FIE and after registering the same, trap proceedings had been projected and concluded in the manner as desired by him against the natural happenings. Though the trap money was seen by everyone at the place where it was dropped, the Trap Laying Officer has also posted a constable as guard for the same for 3 hours and thereafter, arrest was shown and based on the arrest, recovery of trap money is said to have been made,. Further, the manner in which, the phenolphthalein test has been conducted is contrary to the evidence of other witnesses. The Trap Laying Officer without proper verification and with the only intention to succeed in his trap had recorded the happenings as though the respondent had received the trap money and handed over the same. The collection of hand washed sodium carbonate solution also creates



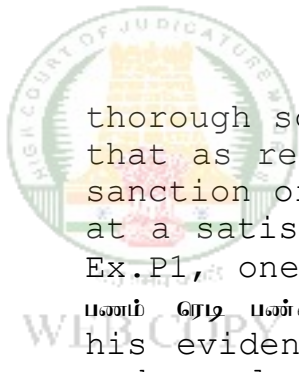
investigation after the trap. Though he seems to have recorded so many witnesses' statements, he feigns ignorance with regard to the procedure of processing of passport application verification, the time duration, the officer, who is empowered to give verification certificate and about the other procedures. P.W.17 obtained sanction for prosecution and filed the charge sheet as against the respondent.

18.Further, P.W.17 admits that one Periyasami, Head Constable was attached to Vigilance and Anti corruption wing and his wife Angamuthu was embroiled with one Uma Maheswari and a case in crime No.300 of 2003 has been registered by the Kenikkarai police. Since the respondent had acted against the interest of Periyasami, he has been victimized in this case. P.W.10 corroborates and confirms the case registered against the accused on the complaint of Angamuthu and hence, there was clear motive to implicate the respondent. The lower Court on proper analysis of the evidence of both oral and documentary had given a well reasoned judgment of acquittal. The Apex Court has stated that the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court, unless there is perversity. In support of his contention, he relied on the following citations:

- 1. (2005) 8 Supreme Court Cases 364 - State V. K.Narasimhachary;**
- 2. (2006) 1 SCC 401 - T.Subramanian Vs. State of T.N.**
- 3. (2009) 3 Supreme Court Cases 779 - C.M.Girish Babu V. CBI**
- 4. (2014) 13 Supreme Court Cases 55 - B.Jayaraj V. State of A.P.**
- 5. (2014) 13 Supreme Court Cases 143 - Satvir Singh V. State of Delhi.**
- 6. (2015) 10 Supreme Court Cases 152 - P.Satyanarayana Murthy V. State of A.P.**
- 7. (2016) 12 Supreme Court Cases 150 - V.Sejappa V. State**
- 8. (2017) 4 MLJ (Cr1.) 706 - State V. K.A.Palanisamy**
- 9. (2017) 4 MLJ (Cr1.) 711 - State V. Tr.L.Mahendran**
- 10. (2019) 1 MLJ (Cr1) 207 (SC) - Dashrath Singh V. Central Bureau of Investigation**
- 11.Crl.A.No.74 of 2014 - State rep. By The Inspector of Police, Vigilance and Anti Corruption Wing, Thanjavur Vs. A.Sivakumar @ Irudayaraj.**

19.Heard the learned Additional Public Prosecutor appearing for the appellant/State and the learned counsel appearing for the respondent and perused the materials available on record.

20.Considering the rival submissions and perusal of the materials and on the dictum of the Apex Court, this Court, on

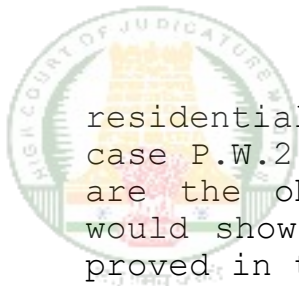


thorough scrutiny of evidence both the oral and documents, would see that as regards the sanction, P.W.1 admits in his evidence that the sanction order does not elaborate, however, he independently arrived at a satisfactory conclusion and thereafter, accorded sanction. In Ex.P1, one of the reason for accorded sanction is that “நான் கேட்ட பணம் ஏதே பண்ணிவிட்டாயா?”. However, P.W.3 has not stated these words in his evidence. Therefore, there are contradictions. The sanction order also does not mention with regard to obtaining of VAO certificate and thereafter, the verification process was complete in all form.

21.Added to it, P.W.1 had admitted that he had received draft sanction order. P.W.2 defacto complainant had not supported the case of the prosecution. In such case, there is no material to prove the demand. P.W.4 is the other witness, who was present, when the earlier demand is said to have been made. This witness does not speak about any demand and not supported the case of prosecution. P.W.3 is the accompanying witness. In his evidence, he has not stated about the demand made by the respondent. It is well established that in a trap case, proof of demand in sine quo non and in this case, no demand has been proved. In view of the same, it cannot be stated that the prosecution had proved the case. Added to it, P.W.3 accompanying witness admits that he was compelled and made to be a witness and when he resisted the same, he was forced threatened, fearing consequences as he was also under the purview of the appellant. Hence, this witness lost its credibility. This witness had never stated about any demand made by the respondent.

22.Further, according to this witness, when the respondent was identified to the Trap Laying Officer, the Trap Laying Officer immediately asked one of his team member to prepare Sodium Carbonate solution in the place, where the money was dropped and hand wash solutions were collected. On the other hand, P.W.15, Trap Laying Officer states that after identification of the respondent, he was taken to the shop, made him to sit and thereafter, hand wash solutions were collected. Likewise, both the witnesses have stated nothing as to the respondent attempted to run away. The motor bike from which, the application forms were recovered viz., Exs.P21 to 27 was not seized as case property and marked as material object.

23.P.W.3 in his evidence states that the mahazars were handwritten and taken in carbon copies and he has singed on the same. On the other hand, all the documents produced in this case are typed copies and no handwritten documents are produced. Thus, the credibility of the documents are questionable. Further, all the witnesses attached to Kenikkarai Police Station and the witnesses from the Officer of the Superintendent of Police. As per Ex.P19, the authority to recommend or reject a passport application is the Sub Inspectors of Police and above. The respondent is not the authority to recommend or to reject the passport application. The proof of



residential certificate issued by VAO is a vital document. In this case P.W.2 has not produced this document. Further, Exs.P32 and 33 are the observation mahazer and rough sketch respectively, which would show from where the tainted money was recovered has not been proved in the manner known to law.

WEB COPY

24.Further, in this case, the complaint came to be lodged at 11.00 a.m. and the FIR came to be registered at 12.00 noon and there is no verification carried out with regard to the antecedents of the respondent, which is an important factor. The demand made by respondent has not been proved which is a sine quo non. Therefore, this Court is of the view that the prosecution had not proved the case beyond the reasonable doubt as against the accused. In view of the fact that the prosecution had not proved that the respondent receiving bribe amount, the question of dislodging the statutory presumption under Section 20 would not arise and the lower Court, has rightly acquitted the appellant and there is no need to interfere with the findings of the trial Court and this criminal appeal is liable to be dismissed.

25.Accordingly, this criminal appeal is dismissed and the judgment of acquittal passed in Special C.C.No.7 of 2007, dated 22.01.2014 by the Special Court/Chief Judicial Magistrate, Ramanathapuram is confirmed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Arul

To

1. The Special Court/Chief Judicial Magistrate,
Ramanathapuram
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.GANDHI, Advocate (SR-1147[F] dated 09/01/2020)

Crl.A.(MD)No.231 of 2014

07.01.2010

MK (27.01.2020) 10P 4C