Bail Slip
Crl.A.(MD)No.307 of 2014

Tha Appellant/Sole Accused, viz.,Selvakumar, S/o.Manthiram Pillai, was enlarged on bail, pending disposal of appeal, as per the order of the Court dated 26.11.2014, made in MP(MD)No.1 of 2014 in Crl.A.(MD)No.307 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.11.2019
PRONOUNCED ON : 12.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.A.(MD)No.307 of 2014

Selvakumar ... Appellant/ Sole Accused

Vs.

State through the Inspector of Police,
Vigilance and Anticorruption Wing,
Thoothukudi.
[Cr.No.08 of 2006] ...Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment passed by the Special Court for Corruption Act cum Chief Judicial Magistrate, Tuticorin, Tuticorin District in Spl.C.No.10 of 2007, dated 07.11.2014.

For Appellant : Mr.V.Kathirvelu,
Senior Counsel,
for Mr.K.Prabhu

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

J U D G M E N T

The appeal is arising out of the conviction and sentence imposed by the Special Court for trial of cases under Prevention of Corruption Act cum Chief Judicial Magistrate Court, Thoothukudi in SplC.C.No.10 of 2007. By order dated 07.11.2014, the trial Court found the appellant guilty for the offence punishable under Sections 7 of the Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo two years of rigorous imprisonment with a fine of Rs.2000/- and in default of payment of fine, to undergo six months rigorous imprisonment. The appellant was also found guilty for the offence punishable under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and convicted and sentenced to undergo two years rigorous imprisonment with a fine of Rs.2000/- and in default of payment to undergo six months rigorous imprisonment and the above said sentences are ordered to run concurrently.

2.The case of the prosecution in brief is as follows:

[i] The defacto complainant, namely, Sivaji [PW2] is a resident of Keela Nalumoolaikinaru approached the Village Administrative Officer, namely, M.Selvakumar [Appellant], to do the needful in transferring the name in the patta and for issuing new patta in respect of the lands purchased by his aunt one Kuruvammal. The accused officer asked the defacto complainant to get the signature of his aunt in a plain paper. Accordingly, the defacto complainant got the signature of his aunt in a plain paper and handed over the same to the accused officer on 13.11.2006 at 11.00am and the accused officer received the same and replied that he would do necessary arrangements.

[ii]Again the defacto complainant met the accused officer on 29.11.2006 at 5.00pm and enquired about the patta. The accused officer demanded Rs.1,000/- as illegal gratification to make necessary arrangements to give the name transferred patta. When the defacto complainant expressed his inability to give Rs.1000/-, the accused officer insisted him that only if he pays Rs.700/-, he would make necessary arrangements for issuance of patta. Then the defacto complainant informed his aunt Kuruvammal about the demand, she replied that she has no money, asked the defacto complainant to give the money and she would give him the money later. Since the defacto complaint [ExP2] was not willing to give bribe, he lodged a complaint [ExP2] before the respondent Police on 30.11.2006 at 11.30am.

(iii) Based on the complaint [ExP2] a case in Crime No.08 of 2006 was registered against the accused officer for the offence under Section 7 of the Prevention of Corruption Act by the Inspector of Police [PW4]/ Trap Laying Officer [TLO] and the FIR is marked as ExP.18. Then he recorded the statement of the defacto complainant. Based on his request one Radhakrishnan [PW3], Typist from the Office of Superintending Engineer, TNEB, Thoothukudi and one Muthukumarasamy, Junior Assistant from the Office of the Chief Educational Officer appeared before him at 2.00pm for the trap proceedings to stand as shadow witnesses. TLO introduced the shadow witnesses to PW2 and explained about the complaint given by PW2, to the official witnesses, handed over a copy of the complaint and FIR and asked them verify the same with PW2. Then the TLO conducted a demonstration about the phenolphthalein test and about the trap. Thereafter, the TLO obtained Rs.700/-[MO1 series Rs.100 X 7] intended to be given to the accused officer and the serial number of the currencies were noted in the entrustment mahazar [ExP6]. PW2 and the Police party attested the same. Later the Police party smeared the phenolphthalein powder on the currencies and gave them to PW2. The TLO instructed PW2 to meet the accused officer and if the accused officer demands the money, then only he should give the money to the accused officer. PW3 was also directed to accompany PW2 and the TLO instructed them to show signal, after the accused officer received the money.

(iv)Accordingly, on 30.11.2006, PW2 along with PW3 went to office of the accused officer around 4.45pm, but the office was found locked, they waited outside the office for sometime. Then the accused officer came in a two wheeler. PW2 asked the accused officer about the patta, the accused officer asked him whether he has brought the money as demanded by him and PW2 gave the phenolphthalein coated money to the accused officer, who in turn, received the money with his right hand and kept the same in his shirt pocket. Thereafter, PW2 along with PW3 came out of accused officer's house and PW2 showed the pre arranged signal.

(v) Then TLO enquired with PW2 as to the happening and PW2 explained that the accused officer received the money. Thereafter, the TLO along with his team went inside the office, the accused officer took out the money from his pocket and thrown away. The defacto complainant identified the accused officer and the TLO introduced himself to the accused officer. On his request the official witness collected the money thrown by the accused officer and the serial numbers of the currency notes were checked with the entrustment mahazar and the same was tallied. Then two sodium carbonate solutions were prepared in two glass tumblers and fingers of both hands of the accused officer were immersed in them and on immersion, both solutions turned into pink in colour. They were sealed and recovered and marked as MO2 and MO3 and it was signed by the TLO and the official witnesses. The shirt pocket of the accused officer was also subjected to phenolphthalein test and the colour of the solution changed into pink in colour. The solution is marked as MO8 and the shirt is marked as MO9. They prepared a mahzar [ExP14] and it was attested by the TLO and the official witnesses. He arrested the accused around 7.40 pm and from 7.50 pm to 8.05 pm the house of the accused officer was searched and nothing was recovered from his house. He prepared a rough sketch [ExP19]. Then the TLO sent the materials to the Court concerned through Form 95.Thereafter, the accused officer was remanded to judicial custody and he placed the matter for further investigation before the Inspector of Police.

3.PW14 the Inspector of Police, Vigilance and Anticorruption, Nagercoil has taken this case for investigation. He recorded the statements of the witnesses and obtained chemical analysis report [ExP27] and after completion of the investigation, he filed a final report as against the accused officer for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 before the Special Court for trial of Cases under Prevention of Corruption Act cum Chief Judicial Magistrate Court, Thoothukudi and the same was taken on file in Spl.C.C.No.10 of 2007.

4.During trial On the side of the prosecution 14 witnesses were examined, 29 documents were marked and 9 material objects were produced.

5.The available prosecution evidence are as follows:

(i) PW1 is the then Revenue Divisional Officer, Tiruchendur and he has deposed that after being satisfied with the available materials, he accorded sanction [ExP1] for prosecuting the appellant.

(ii) PW2 is the defacto complainant and he speaks about the demand made by the accused officer, lodging of complaint [ExP2] before the Vigilance and Anticorruption Wing, Nagercoil and the acceptance of bribe money by the accused officer in the presence of official witness.

(iii) PW3 is a shadow witness and he speaks about the demand and acceptance of the bribe money by the accused officer from PW2 in his presence.

(iv) PW4 is the Trap Laying Officer. He speaks about the complaint lodged by PW2, registration of FIR in Crime No.8 of 2006, summoning of official witnesses, preparation of entrustment mahazar, demonstration of phenolphthalein test, the trap laid by him and the preparation of observation mahazar, rough sketch, recovery of bribe money from the accused officer, recovery mahazar and the arrest of the appellant

(v) PW5 is the aunt of the defacto complainant, on her behalf the defacto complainant approached the appellant.

(vi)PW6 is the then Tahsildar, Tiruchendur and he speaks about the application given by the said Kuruvammal for patta transfer in respect of the land in S.No.529/22B.

(vii)PW7 is the then Assistant of Sub Registrar Office, Tiruchendur and he speaks about the registration of land in Survey No.529/22B on 03.01.2006.

(viii)PW8 is then Revenue Inspector and he speaks about forwarding of application of PW5 to the Zonal Deputy Tahsildar, Tiruchendur.

(ix)PW9 is the then Village Administrative Officer, Keezha Tiruchendur and he speaks about the charge taken from the appellant/accused officer on 04.12.2006.

(x)PW10 is the then Village Assistant of Keezha Thiruchendur and he speaks about the request of the defacto complainant for chitta.

(xi)PW11 is the then Zonal Deputy Thasildar, Tiruchendur and he speaks about the procedure for patta transfer and he speaks about the action taken on the application of the PW5, for patta transfer.

(xii)PW12 is the Scientific Officer and she speaks about the analysis of the MOs, the presence of Phenolphthalein and sodium in the MOs and she also speaks about the issuance of chemical analysis report [ExP27].

(xiii)PW13 is the then Head Clerk of the Chief Judicial Magistrate, Thoothukudi and he speaks about the sending of the MOs for analysis and the receipt of the report from the Forensic Science Department.

(xiv)PW14 is the Investigating Officer, who recorded the statements of the witness and filed a final report against the accused officer on 28.09.2007.

6.After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant and the same was denied as false. On the side of the appellant/accused officer two witnesses namely One Chandran [DW1] and Vembu Alias Vembadi Muthu [DW2] were examined and four documents were marked.

7.The trial Court, after completion of the trial and after hearing the arguments on either side, found the appellant guilty, convicted and sentenced as stated supra. As against the conviction and sentence, the appellant has preferred the present appeal.

8.Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

9.The learned Counsel for the appellant has raised the following grounds:

(i) PW5 Kuruvammal herself has submitted an application to the Deputy Tahsildar, Tiruchendur as on 22.11.2006 and therefore, there is no necessity for dealing with PW2, who is alleged to have represented the said Kuruvammal.

(ii) On the date of trap, ie., on 30.11.2006, the appellant was on leave, which is evident from Ex.D3 and ExD4.

(iii) According to PW2, he met the appellant on 13.11.2006, but the appellant was on EL from 09.11.2006 to 16.11.2006 as per the Service Register Extract of the appellant.

(iv) According to Thasildar [PW11], Patta for PW5 was made ready as early as 27.11.2006 based on the recommendation of the Village Administrative Officer and Revenue Inspector, which is evident from ExP21.

(v) The demand and acceptance are not proved in this case, because, according to PW3, the VAO received the money inside the office, whereas, according to PW2, the the appellant received the money opposite to the VAO office.

(vi) The owner of the land, Kuruvammal [PW5] has not given any complaint

(vii) The sanctioning authority has not perused all the records before according sanction and therefore, the sanction is a defective one.

(viii)There was a business motive between the brother of the appellant officer, one Sivasubramanian and Kuruvammal in respect of running Xerox shop. Therefore, to take revenge on the appellant, a false complaint has been given against the appellant.

10.1.Per contra the learned Additional Public Prosecutor appearing for the state submitted there is no evidence to show that PW5 personally made the application dated 22.11.2006, but, the evidence of PW2 and PW5 consistently establish that PW2 has approached the appellant and submitted application on behalf of Kuruvammal[PW5].

10.2.Insofar as the appellant was on leave 30.11.2006 is concerned, according to DW1 there is no procedure for issuance of certificate [ExD3] and he has not perused the leave application.

10.3.The application is stated to have been given on 13.11.2006 by the PW2. The appellant has raised a ground, since the appellant was on EL from 09.11.2006 to 16.11.2006, PW2 could not have met the appellant on 13.11.2006 in his office. However, there is no proof to show that the appellant was not in station during the above leave period. So such a contention cannot be accepted.

10.4.Insofar as the ground that patta order has already been granted on 27.11.2006 and therefore, there is no necessity for the appellant to demand the money on 29.11.2006 is concerned, it is to be noted, that ExP21 is an order to include the name of PW5 in the joint patta. The issuance of separate patta is entirely different and as on 30.11.2006, no proceedings for issuance of separate patta have been initiated.

10.5.PW2 and PW3 categorically deposed that the meeting of the appellant and handing over the money is in the Chavadi. There is no contradiction in their evidence.

10.6.Insofar as the motive is concerned, there is no evidence that there was a dispute between the PW5 and the brother of the appellant and he has supported his brother in this regard.

11.This Court has paid its anxious consideration to the rival submissions made on either side and perused the materials placed on record.

12.Insofar as the sanction order is concerned, PW1, the Sanctioning Authority, in his evidence categorically stated that after perusing all the relevant records including the copy of FIR, Statements of the witnesses, Mahazars and chemical analysis report and after being satisfied with the materials has accorded sanction. Therefore, the sanction is valid in the eye of law. What is required for a sanctioning authority is a *prima facie* subjective satisfaction that an offence has been committed and he is not expected to conduct a detailed examination as to whether the offence is made out or not.

13.With regard to the ground raised by the appellant that on 30.11.2006 the appellant was on leave and therefore, PW2 could not have met the appellant is concerned, according to DW2 one Vembu @ Vembadi Muthu, on 30.11.2006 at about 5.30pm, he noticed the defacto complainant met the VAO in front of the VAO office and enquiring about the patta for Kuruvammal and the appellant replied that he had already made arrangements and given the same in Taluk Office and asked PW2 to collect the same from Taluk Office, after paying necessary charges. Though it is stated that the appellant was on leave, there is no leave application to prove the same and moreover, the presence of the appellant on 30.11.2006 in his office is clearly established through this evidence of DW2.

14.Though the defence has raised a ground that the appellant had already made recommendation on 27.11.2006 itself and there is no possibility for the appellant to demand illegal gratification, according to PW11 Thasildar, there is no computerised patta given and to get the patta pass book, Form VII should be produced along with two passport size photos and it would be forwarded to the the appellant [VAO] through the Tahsildar for recommendation. Therefore, the process is not yet completed and a second round of process is there for issuance of patta. Thus, such a ground is not sustainable.

15.The defacto complainant [PW2] and the official witness

[PW3] have clearly stated about the demand of illegal gratification and acceptance of tainted money in the presence of PW3 and the recovery of tainted money from the possession of the appellant, which is deposed by the TLO and which is also proved by the phenolphthalein test conducted on the hands of the appellant. Further, the evidence of the Scientific Assistant [PW6] and the chemical analysis report also corroborate the recovery of tainted money from the possession of the accused officer.

16.Therefore, the prosecution has established the demand, acceptance and recovery of illegal gratification in this case.

17.Bribe givers only ventilate their grievance, approach the vigilance officer after their prolonged suffering at the instance of the accused officer, which has been painfully observed by the Hon'ble Supreme Court in State of U.P.Vs.Dr.G.K.Ghosh [1984] 1 SCC 254 as follows:

> *"by and large a citizen is somewhat reluctant, rather than anxious, to complaint to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government Servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of the Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government Officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the Court, he has to face he humiliation of being considered as a person who tried to falsely implicate a Government Servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind*

that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-by to the rules, the official refuses to yield".

18. Insofar as the motive attributed by the appellant is concerned, there is no evidence to show that there was a dispute between PW5 Kuruvammal and the brother of the appellant and the appellant has supported his brother. In the absence of any such material to establish the motive, the same cannot be accused.

19.So citing unconnected stale motive is universal in the case of corruption by fiber thread of prolonged cross examination that too after number of years from the date of occurrence. What is required for an offence under the Prevention of Corruption Act is that the demand, acceptance and recovery. In this case, the demand and acceptance were sufficiently proved by the prosecution and the tainted money as recorded in the entrustment mahazar [ExP6] was also recovered from the accused officer. The phenolphthalein test conducted on the both hands of the appellant/accused officer has also proved positive.

20.The corruption has ruined the system. Despite implementation of the Prevention of Corruption Act, corruption has not been eradicated and it has become a common affair. Nobody is having the sense of fear to the prevailing Act. The higher officials must act as an example to their subordinates in discharge of their duties. If the higher officials themselves commit mistakes, then they lose their morale to question their subordinates. Ultimately, the system fails. The Hon'ble Apex Court in *Niranjan Hemchandra Sashittal* v. *State of Maharashtra* reported in (2013) 4 SCC 642, painfully discussed the gravity of the corruption in the following terms:

> *"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."*

21.Since the prosecution has established their case, this Court is not inclined to interfere with the order of the trial Court. Accordingly, the criminal appeal is dismissed. The conviction and sentence imposed on the appellant in Spl.C.No.10 of 2007, dated 07.11.2014 by the Special Judge for trial of cases under Prevention of Corruption Act cum Chief Judicial Magistrate, Thoothukudi is hereby confirmed. The bail bonds if any shall stand cancelled. The trial Court is directed to secure the appellant and confine him to prison, to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

To

1.The Chief Judicial Magistrate,
Special Court for Anticorruption Cases,
Thoothukudi.

2.The Inspector of Police,
Vigilance and Anticorruption Wing,
Thoothukudi.

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

4.The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.

+1 CC to Mr.K.PRABHU, Advocate (SR-6053[F] dated 13/02/2020)

judgment made in
Crl.A(MD)No.307 of 2014
12.02.2020

KM (31.12.2020) 10P 7C