BAIL SLIP

Petitioner/Appellant viz., Johnson, S/o.Kalappan, was released on bail vice this Court order dated 01.06.2015 in MP(MD) No.1 of 2015 in CRL A(MD).131 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.11.2019
PRONOUNCED ON : 07.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.131 of 2015

Johnson ... Appellant/ Sole Accused

Vs.

The State represented by
the Inspector of Police,
Vigilance and Anticorruption Wing,
Virudhunagar.
[Cr.No.03 of 2002] ...Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and sentence passed against the appellant in Spl.C.C.No.14 of 2014 dated 30.04.2015 on the file of the Special Court for Anticorruption Cases / Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

For Appellant : Mr.Veera Kathiravan,
Senior Counsel for
Mr.R.Manickaraj

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, Virudhunagar @ Srivilliputhur in Spl.C.C.No.14 of 2014. By order dated 30.04.2015, the trial Court found the appellant guilty for the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo six months rigorous imprisonment with a fine of Rs.1000/- and in default of payment of fine, to undergo one month simple 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 one year rigorous imprisonment with a fine of Rs.1000/- and in default of payment to undergo three months simple 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, Periyasamy [PW8] is a resident of Kosukundu Village, Sattur Taluk, Virudhunagar District and he is running a dairy farm. Some villagers approached him and told him that if he gets loan for purchasing cows, they would supply the milk to his dairy farm, for which, income certificate needed to be obtained. Ten persons from his village gave him the application for getting the income certificate and asked him to arrange for the same. Accordingly, he gave the applications [ExP10 to ExP19] to the appellant / Village Administrative Officer of Kosukundu Village. After fifteen days, on 05.07.2002 he along with one Palsamy [PW2], husband of one Pandiyammal one of the applicants, met the appellant / accused officer at his residence and enquired about the income certificates, for which the accused officer replied that the certificates were ready and demanded Rs.150/- per certificate, totalling to Rs.1,500/-. The defacto complainant [PW8] told him that the applicants are very poor and requested him to help them. However, the accused officer demanded at least Rs.100/- from each applicant totalling to Rs.1,000/-. Further the accused officer asked them to give the money on 08.07.2002 which falls on Monday and to get the certificates. PW8 and PW2 left the place. As no applicant was willing to pay the bribe money, PW8 and PW2 lodged a complaint[ExP2] before the respondent Police on 09.07.2002.

[ii] Based on the complaint [ExP1] a case in Crime No.03 of 2002 was registered against the accused officer for the offence under Section 7 of the Prevention of Corruption Act by the Inspector of Police [PW21]/ Trap Laying Officer [TLO] and the FIR is marked as ExP.31. Based on his request one Venkatachalam [PW3], Junior Assistant from the Office of the District Educational Officer and one Nagendran, Assistant from health Department appeared before him at 1.00pm to stand as shadow witnesses. TLO introduced the shadow witnesses to PW8, explained about the complaint given by PW8, to the official witnesses, handed over a copy of the complaint and FIR and asked them to get further details from PW8. Then the TLO conducted a demonstration about the phenolphthalein test and about the trap. Thereafter, the TLO obtained Rs.1,000/-[MO3 series Rs.100 X 10] intended to be given to the accused officer and the serial number of the currencies were noted in the entrustment mahazar [ExP3]. PW8 and the Police party attested the same and later the Police party coated the currencies with phenolphthalein powder and gave them to PW8. The TLO instructed PW8 to meet the accused officer at his residence 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

PW8 and the TLO instructed them to show signal, after the accused officer received the money.

[iii] Accordingly, on 09.02.2002, PW8 along with PW3 went to the residence of the accused officer around 4.00pm and PW8 asked the accused officer about the income certificates. When the accused officer asked him whether he had brought the money, PW8 told him that he had brought the money and gave the phenolphthalein coated money to the accused officer, who in turn, received the money, counted the same with his hands and kept the same on the table. Subsequently, the accused officer gave him the ten income certificates. Thereafter, PW8 along with PW3 came out of accused officer's residence and PW8 showed the pre arranged signal.

[iv] Then the TLO enquired with PW8 as to what happened and PW8 explained that the accused officer received the money and gave the certificates. Thereafter, the TLO along with his team went inside the house of the appellant/accused officer, the official witnesses identified the accused officer and the TLO introduced himself to the accused officer. Wherein, two sodium carbonate solutions were prepared in two glass tumblers and the fingers of both hands of the accused officer were immersed into them and on immersion, both solutions turned into pink in colour, they were sealed and recovered and marked as MO1 and MO2. When the accused officer was questioned about the receipt of the bribe money, the accused officer took the tainted money from the table and there was Rs.1,000/- [Rs.100 x 10] and the serial numbers of the said currencies tallied with the entries made in the entrustment mahazar. The TLO has also recovered the certificates from the PW8 and marked as ExP.20 to ExP.28.

[v]Subsequently, the accused was arrested around 6.00pm. With the consent of the accused officer, his house was searched and during the search, TLO recovered ExP5 copy of the bank pass book, and ExP32 receipt for remittance of Rs.1,660/- in a Chit Funds Pvt Limited at Sattur, ExP.33 is the Fixed Deposit Receipt for Rs.70,000/- in Central Co-operative Bank, Sattur, Ex.P34 and Ex.P35 are the Fixed Deposit Receipts each for Rs.55,500/- in the Tamil Nadu Merchantile Bank. Then he prepared an observation mahazar [ExP3], Athakshi and [ExP7]. Thereafter, the accused officer was remanded to judicial custody and he placed the matter for further investigation before the Inspector of Police.

3.PW22 the Inspector of Police, Vigilance and Anticorruption, Virudhunagar Division has taken this case for investigation. He recorded the statements of the witnesses and obtained chemical analysis report [ExP9] 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, Virudhunagar @ Srivilliputhur and the same was taken on file in Spl.C.C.No.14 of 2014.

4.During trial On the side of the prosecution twenty two witnesses were examined, thirty documents were marked and three material objects were produced.

5.The available prosecution evidence are as follows:

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

[ii] PW2 is a friend of PW8 defacto complainant and he has spoken about the demand made by the appellant and he has also attested the complaint [ExP1].

[iii] PW3 is a shadow witness and he speaks about the demand and acceptance of the bribe money by the accused officer from PW8 and conducting the phenolphthalein test.

[iv] PW4 is the then Assistant at Milk Procurement Centre and he speaks about the applications submitted by PW10 to PW19 for obtaining loan for purchase of cows.

[v] PW5 is the then Deputy Registrar [Diary], Virudhunagar.

[vi] PW6 is the Scientific Assistant Grade I at Forensic Science Department, Chennai and she has spoken about the presence of phenolphthalein and sodium in the MOs.1 and 2 and she has also spoken about the issuance of Chemical Analysis Report [ExP9].

[vii] PW7 is the wife of PW8 and she was the President of the Milk Co-Operative Society. She has spoken about the applications submitted to the appellant for getting income certificates.

[viii] PW8 is the defacto complainant and he speaks about submitting applications to the appellant, the demand and acceptance of bribe money by the appellant from him and lodging of complaint and the trap.

[ix] PW9 is the then President of Milk Procurement Centre, Virudhunagar and he speaks about the procedure for registering the Milk Co-Operative Society.

[x] PW10 to PW19 did not support the case of the prosecution and they were treated as hostile witnesses.

[xi] PW20 is then Junior Assistant of the Chief Judicial Magistrate Court, Virudhunagar @ Srivilliputhur. He speaks about the sending of MOs to the Forensic Science Department, Chennai for analysis and getting back the MOs along with chemical analysis report.

[xii] PW21 is the then Inspector of Police, Vigilance and Anticorruption, Virudhunar / Trap Laying Officer. He speaks about the complaint lodged by PW8, registration of FIR, preparation of entrustment mahazar, the laying of trap, conducting the phenolphthalein test, preparation of observation mahazar, recovery mahazar and recovery of some exhibits and the arrest of the appellant.

[xiii]PW22 is the Investigating Officer, who recorded the

statements of the witnesses and collected documents and after completion of investigation, filed the final report as against the accused officer.

6.After completion of the prosecution side evidence, the incriminating circumstances were put before the appellant under Section 313 CrPC and the same was denied as false. On the side of the appellant/accused officer two witnesses were examined and one document was 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 Senior Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.

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

[i] The prosecution case is that the appellant was working as VAO and he received bribe amount of Rs.1000/- from PW8 for issuing income certificate to PW10 to PW19, whereas PW10 to PW19 had stated that they had never given any bribe money to PW8 for getting income certificate.

[ii]According to the prosecution, PW10 to PW19 are the members of the VRD 1390 K.Muthusamypuram, Mahalir Milk Production Co-Operative Society and on their behalf, PW8 approached the appellant for getting income certificate, whereas they have deposed that they are not the members of the said Society and they have never asked PW8 to get them the income certificate.

[iii]According to the Revenue Department Rules and Regulations, Taluk Tahsildar alone has the authority to issue the income certificates. The income certificates are said to have been issued by the appellant and in the said certificates there is no signature of the Revenue Inspector or the seal of the Taluk Office concerned.

[iv]The sanction order issued by PW1 is not a valid sanction order.

[v]According to the Prevention of Corruption Act, the Deputy Superintendent of Police alone can conduct investigation in this case, but the Inspector of Police has conducted investigation in this case.

[vi] There is a delay in lodging the complaint.

[vii]The witness PW2, PW7 and PW8 had an enmity with the appellant relating to a complaint given by the appellant regarding stolen of trees and in order to take revenge, this complaint has been lodged.

10.Per contra the learned Additional Public Prosecutor appearing for the State submitted that the prosecution has established its case. The demand of illegal gratification, acceptance and recovery of tainted money has been proved in this case by the evidence of defacto complainant [PW8], shadow witness [PW3], Scientific Assistant [PW6], the TLO [PW21] and through the exhibits, Entrustment mahazar [ExP3], Athaksi [ExP4], the chemical analysis report [ExP9]. Therefore, the trial Court has rightly convicted the appellant.

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.Insofar as the ground raised that the Deputy Superintendent of Police alone can conduct the investigation is concerned, though Section 17 of the Act, no doubt empowers only Deputy Superintendent of Police or a police Officer of equivalent rank to investigate into an offence punishable under the Act without any special Order of the Magistrate, but the proviso empowers a Police Officer not below the rank of the Inspector of Police to investigate into the offences under the Act, if he is authorised by the State Government in this behalf by general or special order.

14.The learned Additional Public Prosecutor referring G.O.Ms.269 of 1990 dated 04.06.1990 contended that the said GO is an amendment to the Notification made in S.R.O.No.3 66 of 1966 dated 10.01.1966. G.O.Ms.No.80 Public (Services-B) Department dated 10.01.1966 which is the Notification referred to in G.O.Ms.No.269 of 1990 authorises all the Inspectors of Police of the Directorate of Vigilance and Anti Corruption, Madras to exercise the power of investigation and arrest mentioned in that proviso, only excluding the power of arrest without a warrant any Officer on the pay scale maximum of which is about Rs.700/- per month. G.O.No.269 dated 04.06.1990 only amends that G.O whereby the power of arrest is made available to the Inspector of police authorised to investigate only of an officer, who does not belong to Groups A and B on the pay scale maximum of which is about Rs.1,950/- per month. Therefore, this ground raised by the appellant on the lack of jurisdiction for an Inspector to investigate is not acceptable.

15.Insofar as the delay in lodging the complaint is concerned, though the initial demand was on 05.07.2002 the last demand was made on 08.07.2002 and the complaint was lodged on 09.07.2002 and therefore, this cannot be stated as a delay.

16.The demand by the accused officer is established through the defacto complainant PW8, his friend PW2 and the official witness PW3. The accused officer made a demand to PW8 in the presence of PW2 on 05.07.2002. There was another demand on 08.07.2002 and the reiterated demand on the date of trap has also been spoken by PW8 and the official witness PW3. PW3 Venkatachalam an Officer working as a Junior Assistant in the office of the District Educational Officer, Virudhunagar accompanied PW8 to the residence of the accused officer on 09.02.2002 and in his presence also the accused officer has made the demand and accepted the tainted money and his evidence corroborates the evidence of PW8 for the demand and acceptance. The money recovered from the accused officer tallied with the tainted money noted in the entrustment mahazar ExP3. The chemical analysis report [ExP9] and the evidence of Scientific Expert[PW6]. PW6 has spoken about the presence of phenolphthalein and sodium in the MOS.1 and 2.

17.Though PW10 to PW19 the other beneficiaries did not support the case of the prosecution, the recovery of income certificates in their names Ex.P20 to Ex.P28 from the accused officer in the presence of PW3 official witness, PW4 the Assistant at Milk Procurement Centre, Virudhunar speaks about the applications submitted by PW10 to PW19 for obtaining loan for purchase of cows. PW9 the then president of Milk Procurement Centre, Virudhunagar and PW5 the then Deputy Registrar [Diary], Virudhunagar were also examined by the prosecution on the procedure for registering the milk co-operative society and on the schemes for loans for purchase of cows

18.Therefore, the prosecution has established the demand, acceptance and recovery of illegal gratification in this case. The presumption under Section 20 of the Prevention of Corruption Act is drawn in favour of the prosecution and the appellant / accused has not substantiated his case to rebut the presumption.

19.Bribe givers only to 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".

20.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 [ExP5] was also recovered from the accused officer. The phenolphthalein test conducted on the both hands of the appellant/accused officer has also proved positive.

21.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 loose 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."*

22.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.C.No.14 of 2014, dated 30.04.2015 by the Special Judge for trial of cases under Prevention of Corruption Act cum Chief Judicial Magistrate, Virudhunagar @ Srivilliputhur 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(CO)

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/ /2021

Sub Assistant Registrar(CS)

dsk

To

1.The Special Court for Anticorruption Cases /
Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputhur.

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

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.R.MANICKARAJ, Advocate SR.No. 5642

judgment made in
Crl.A(MD)No.131 of 2015
07.02.2020

KUN(CO)
TR(05.01.2021) 10P 7C