



BAIL SLIP

A.Rajangam(62/15),S/o.Alagupillai, Appellant/Accused No.1 in CRL A(MD)No.138 of 2015 was directed to be released on bail as per the order of this Court dated 08.06.2015 made in MP(MD)No.1 of 2015 in CRL A(MD)No.138 of 2015 respectively.

T.S.Suryanarayanamoorthy,S/o.Subramanian,Appellant/Accused No.2 in CRL A(MD)No.139 of 2015 was directed to be released on bail as per the order of this Court dated 09.06.2015 made in MP(MD)No.1 of 2015 in CRL A(MD)No.139 of 2015 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.10.2020

Pronounced on : 02.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)Nos.138 and 139 of 2015

A.Rajangam ... Appellant/Accused No.1
in Crl.A(MD)No.138 of 2015

T.S.Suryanarayanamoorthy ... Appellant/Accused No.2
in Cr.A.(MD)No.139 of 2015

Vs.

The State of Tamil Nadu
represented by its
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai.
(in Crime No.01/2001)

... Respondents in both petitions

Common Prayer : Criminal Appeals filed under Section 374(2) of the Civil Procedure Code, to call for the records pertaining to the Judgment in Special Case No.19 of 2011 on the file of the Special Court for trial of Prevention of Corruption Act cases, Madurai, dated 22.05.2015 in Crime No.01 of 2001 on the file of the respondent police and set aside the same and acquit the



appellants/accused No.1 and 2 respectively.

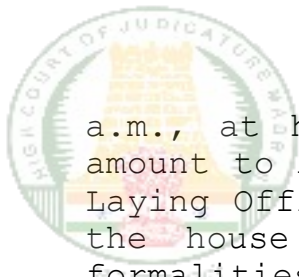
<u>For Appellants</u>	: Mr.T.Lajapathi Roy
in Crl.A.(MD)No.138 of 2015	
in Crl.A.(MD)No.139 of 2015	: Mr.Veerakathiravan
	Senior Counsel
For Respondent	: Mr.A.Robinson
(in both cases)	Government Advocate (Crl.side)

COMMON JUDGMENT

These two criminal appeals have been filed challenging the Judgment dated 22.05.2015 passed by the learned Special Court for trial of Prevention of Corruption Act cases, Madurai in Special Case No.19 of 2011. By the impugned Judgement, A.Rajangam(A1) was convicted for the offence under Section 7 of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.10,000/- and default sentence was also imposed. He was also convicted for the offences under Sections 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.10,000/- and default sentence was also imposed. A2-T.S.Suryanarayanamoorthy was also convicted and sentenced on the same lines. A3-P.Rajan was acquitted. All the three accused were acquitted in respect of the charge of conspiracy.

2.The case of the prosecution:-

A.Rajangam(A1) was working as Village Administrative Officer in Y.Pudupatti Village. During the relevant time, A2 was working as Revenue Inspector. A3 was working as Firka Surveyor. Tr.M.Subburaj (P.W.4) wanted assignment of the communal grazing land in Survey No.45/1 in Kottagaimeedu in Y.Pudupatti Village. He had been sending applications in this regard. The defacto complainant wanted the accused to send a report in his favour to the jurisdictional Thasildhar, so that, he can get assignment of the said land. To do so, A2 is said to have demanded a sum of Rs.25,000/-. This demand is said to have been made in the last week of February 2001. A2 had directed the defacto complainant to approach the first accused. Subburaj met A.Rajangam(A1) on 17.03.2001 at his residence at 08.00 a.m. A1 is said to have reiterated the demand for payment of Rs.25,000/- as illegal gratification. While so, on 07.04.2001, at about 4.15 p.m., when the defacto complainant approached A.Rajangam (A1) at his residence at Anna Nagar in Madurai, A1 demanded that the defacto complainant should bring the amount on 08.04.2001 at 07.00 a.m., to his house. Since the defacto complainant did not want to comply with the said illegal demand, he approached the respondent with a complaint. On 07.04.2001, at about, 09.00 p.m., the respondent registered Ex.P10-FIR in Crime No.1 of 2001. The shadow witnesses were also arranged and the defacto complainant accompanied by the shadow witness Dr.Uthirakumar met A1 on 08.04.2001 at 07.30



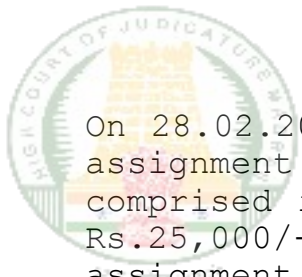
a.m., at his residence. The defacto complainant handed over the amount to A1. Thereupon, pre-arranged signal was given to the Trap Laying Officer. A1 was arrested and thereafter, they were taken to the house of A3. The Trap Laying Officer completed the other formalities. A2 surrendered before the Court a few days later. After completing the investigation, final report was laid against all the three accused. Offences under Sections 7, 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, were taken cognizance and charges were framed against all the three accused. The accused denied the charges and claimed to be tried. In support of the charges, P.W.1 to P.W.14 were examined and Ex.P1 to Ex.P28 were marked. M.O.1 to M.O.5 were also marked. A2-Suryanarayana Moorthy examined himself as D.W.2. Ex.D1 to Ex.D17 were marked on the side of the accused. After considering the entire evidence on record, the learned trial Magistrate acquitted all the accused as regards the charge of conspiracy. A1 and A2 were convicted and sentenced as mentioned above. A3 was acquitted of all the charges. A1 and A2 had filed independent appeals. A1 filed Crl.A.(MD)No.138 of 2015, while A2 filed Crl.A.(MD)No.139 of 2015.

3.The learned counsel appearing for the appellant/A1 and the learned Senior Counsel appearing for A2 reiterated all the contentions set out in the memorandum of grounds. They also filed the notes of argument. The learned counsel submitted that the learned trial Judge ought to have acquitted both the appellants of all the charges and erred in convicting and sentencing them. They wanted this Court to set aside the impugned Judgement insofar as it finds the appellants guilty and allow these appeals.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment is a well reasoned one and that it does not call for any interference. He would contend that the prosecution had established its case beyond reasonable doubt and that the appeals deserve dismissal. The learned Government Advocate (Crl.side) also filed his notes of argument.

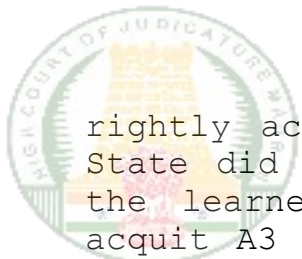
5.I carefully considered the rival contentions and went through the evidence on record.

6.The defacto complainant Subburaj was examined as P.W.4. He joined the Army in 1977 and retired in the year 2000. He submitted an application through his commander seeking free assignment of patta in Madurai. The said application was marked as Ex.P4. He had asked his mother-in-law Gomathiammal to purchase land in his village namely Kottagaimeedu. Accordingly, vide Ex.P5, the land was purchased from one Selvam on 26.07.2000. Thereafter, he wanted assignment for the very same land. He gave an application vide Ex.P6 to the District Collector, Madurai. On 26.02.2001, he met the District Revenue Officer who directed him to approach the jurisdictional Tahsildar. When P.W.4 met the Tahsildar, Madurai North, on 27.02.2001, he was asked to meet the Revenue Inspector.



On 28.02.2001, P.W.4 met A2-T.S.Suryanarayana Moorthy. He asked for assignment in respect of the land purchased by him which is comprised in Survey No.45/1. A2 is said to have demanded a sum of Rs.25,000/- as illegal gratification for making an order of assignment. When P.W.4 expressed his inability, A2 is said to have told P.W.4 to meet the Village Administrative Officer A.Rajangam(A1). On the same day, P.W.4 met A1-Rajangam in his office at Narasingam. A1 reiterated the very same demand. This was repeated on 17.03.2001, when P.W.4 met A1 at his house. By then, A1 had levied 'B' memo on P.W.4 and P.W.4 was asked to pay the same. The penalty receipt was marked as Ex.P7. On 07.04.2001 at about 4.15 p.m., when P.W.4 once again met A1, A1 made it clear that he would submit a recommendatory report only on payment of Rs.25,000/-. Since P.W.4 was not willing to comply with the said demand, he went to the office of the respondent and met one DSP Srinivasan and lodged Ex.P9 complaint. Based on the same, Ex.P10 FIR in Crime No.1 of 2001 was registered by the respondent. P.W.4-Tr.M.Subburaj was advised to come in the morning at about 05.00 a.m., with a sum of Rs.25,000/-. P.W.4-Tr.M.Subburaj went to the office of the respondent in the early hours with a sum of Rs.25,000/-. The Deputy Superintendent of Police introduced P.W.4 to two persons. One of them was P.W.5 -Dr.Uthira Kumar who was working in Usilampatti Government Hospital. The other was one P.Prabakaran who was working as Assistant Engineer in TNEB. When P.W.4 produced a sum of Rs.25,000/-, the same was duly checked and the particulars of the currency were noted down. The amount of Rs.25,000/- was in 50x500 denomination. Phenolphthalein powder was applied on the currency notes. Appropriate advice was given to the decoy witness as well as P.W.4 and Entrustment Mahazar was also prepared vide Ex.P11. At about 07.00 a.m., on 08.04.2001, P.W.4-Defacto complainant and P.W.5-Shadow Witness went to the house of A1-Rajangam in his scooter. The Trap Laying Officer followed them in a Car. P.W.4 deposed that A1-Rajangam reiterated the demand. When P.W.4 handed over the bribe amount, A1-Rajangam received the same and counted them. P.W.5-Uthira Kumar was introduced as the first cousin of P.W.4. They came out and they gave pre-arranged signal to the Trap Laying Officer. Immediately, the Deputy Superintendent of Police and others entered into the house of A1. A1-Rajangam was subjected to phenolphthalein test and the solution, in which, A1 dipped his hand, turned pink. The bribe amount of Rs.25,000/- was recovered from A1. The currency notes recovered from A1 matched with the particulars set out in Ex.P11 Entrustment Mahazar.

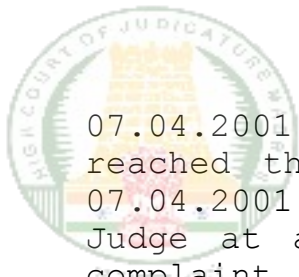
7.The learned counsel appearing for A1 would draw my attention to the testimony of P.W.4 in his cross examination. P.W.4 had denied the signatures attributed to him in Ex.P4 Petition, Ex.P9 Complaint and Ex.P10 FIR. He also claimed that he would sign only as "M.Subburaj" in English and that he would never sign as "சுப்புராஜ்" in Tamil. His further contention is that the Court below had



rightly acquitted the accused of the offence of conspiracy. The State did not file any appeal challenging the same. According to the learned counsel, the reasons, which led the Court below to acquit A3 in toto and all the accused in respect of the charge of conspiracy, should be sufficient to find the present appellants totally innocent. The learned counsel submitted that mere recovery of the tainted money is not sufficient. The prosecution is obliged to establish the demand also. In this regard, according to P.W.4, demand was made for the first time on 28.02.2001. Though P.W.4 would claim, in his chief examination, that he met A2-T.S.Suryanarayana Moorthy on the very same day i.e., 28.02.2001, in his cross examination, he admitted that before 17.03.2001, he had not met A1 at all. The learned counsel also drew my attention to the overall conduct of the defacto complainant. The defacto complainant had not approached anyone with clean hands. Survey No.45/1 is a communal grazing land. It cannot be assigned. But P.W.4 had purchased the same from one Selvam of the same village. He would at the same time seek patta for the purchased land and also assignment. Even without getting patta or assignment, he had sold the same illegally to a third party. When he subsequently filed Writ Petition in W.P.(MD) No.15113 of 2012 before this Court, a counter was filed by the District Collector stating that since the petitioner could not get assignment, he chose to falsely implicate the revenue officials. The learned counsel wants this Court to attach significance to the stand taken by the District Collector in his counter affidavit filed in the aforesaid writ petition. The Writ Petition came to be dismissed by this Court. The stand of the learned counsel is that the allegation made by such a person must be viewed with utmost suspicion. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court reported in **(2014) 13 SCC 55**. He would also refer to the reference made by the two Judges Bench of the Hon'ble Supreme Court in **Neeraj Dutta Case**. Since the evidence of P.W.4 is highly untrustworthy, the learned counsel wants this Court to set aside the conviction imposed on A1-A.Rjangam.

8.I am unable to subscribe to the contentions advanced by the learned counsel appearing for A1. As rightly contended by the learned Government Advocate, P.W.4 was not cross examined on the same day of chief examination. In any event, even if some of the answers given by P.W.4 in the cross examination tend to favour the accused, that would not by itself shake the case of the prosecution.

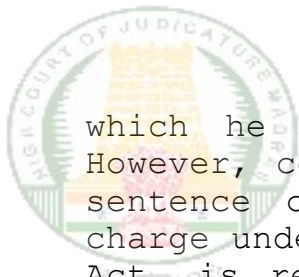
9.I initially wondered as to how the compliant was given in the late hours of 07.04.2001 and on that basis, trap was hastily arranged. But then, in Ex.P9 complaint, it has been mentioned that A1-A.Rajangam wanted P.W.4-Subburaj to come to his house with the amount of Rs.25,000/- next day morning at 7.30 a.m. According to P.W.4, he met A1 in his house at 4.15 p.m., Since the trap had to be laid at 07.30 a.m., on the next day, I can very well understand the steps taken by the respondent in registering an FIR in the night of



07.04.2001. It is seen from the original records that the complaint reached the house of the jurisdictional Judge at 11.30 p.m., on 07.04.2001. The Entrustment Mahazar had also reached the learned Judge at around 10.30 a.m., on 08.04.2001. The reaching of the complaint at 11.30 p.m., and the Entrustment Mahazar at 10.30 a.m., confirm the genuineness of the prosecution claim that the complaint was indeed given in the late hours of 07.04.2001. P.W.4 appears to be a greedy character wanting to grab government land. But on that score, the prosecution case cannot be rejected. If the prosecution case rests solely on the testimony of P.W.4, then, I can probably view with favour the contentions of the counsel for the accused. It is not so. P.W.5 categorically deposed that Al-Rajangam received the bribe amount of Rs.25,000/- given by P.W.4. P.W.5 was the Assistant Surgeon in Usilampatti Government Hospital during the relevant time. There is no reason for P.W.5 to falsely implicate Al. It is not as if the prosecution or P.W.4 knew P.W.5 earlier. The prosecution had merely requested the Deputy Director of Health Services to arrange a decoy witness from the Department. P.W.5 was hastily arranged and he had clearly deposed as to what happened. Al-Rajangam was specifically questioned as regards the incriminating circumstance during his examination under Section 313 of Cr.P.C., Al-Rajangam had not come out with any credible explanation. He had merely characterized the prosecution testimony as false. Of-course, as contended by the learned counsel for the accused, the prosecution is obliged to establish the demand for payment of illegal gratification.

10. According to the prosecution, P.W.4-Subburaj met Al-Rajangam on four occasions i.e., 28.02.2001, 17.03.2001, 07.04.2001 and again on 08.04.2001. Of-course, there is no charge as regards the demand made on 28.02.2001. It is seen that Al had issued 'B' memo vide Ex.P7 on 17.03.2001. On 08.04.2001, P.W.4 Subburaj asked Al-Rajangam as to when he would send the assignment report. Al is said to have told that on payment of Rs.25,000/-, he would send the report next Monday itself. Thus, the demand for payment of illegal gratification stands proved by the testimony of P.W.5. The learned counsel would contend that Al-Rajangam was not the competent authority to grant assignment. He would also claim that the land in question being a communal grazing land, making assignment was impossible. But it is not a ground to disbelieve the prosecution version. It is well settled that a public servant can mislead a gullible person and demand payment of illegal gratification by promising to do an impossible act. Therefore, on the ground projected by the learned counsel, I would not disbelieve the prosecution version.

11. I therefore, hold that the prosecution had proved its case against Al-Rajangam beyond reasonable doubt. The learned trial Judge had given convincing and cogent reasons for finding the appellant/Al guilty. After a careful re-appreciation of the entire evidence on record, I am of the view that conviction of Al for the offence, with

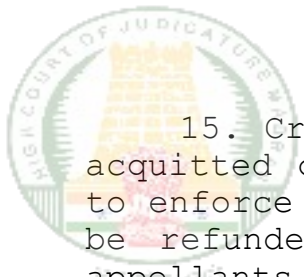


which he was charged, does not deserve to be interfered with. However, considering the age and other mitigating circumstance, the sentence of imprisonment imposed on A1-A.Rajangam in respect of charge under Sections 13(1)(d) r/w 13(2) of Prevention of Corruption Act, is reduced from two years rigorous imprisonment to one year rigorous imprisonment. The sentence imposed for both the charges will run concurrently.

12.The case of A2-T.S.Suryanarayana Moorthy stands on a different footing altogether. As rightly contended by the learned Senior Counsel appearing for the appellant/A2, the charges framed against the accused do not refer to any demand made on 28.02.2001. Of-course, in the deposition, P.W.4 referred to the demand allegedly made by A2 on 28.02.2001, when he met him. It is also true that in the examination under Section 313 of Cr.P.C., the learned trial Judge put this incriminating circumstances against the accused. But the fact remains that the charges are totally silent. When the charges are totally silent, one cannot expect the accused to lead his defence in that regard. It is a fact that there is a fundamental discrepancies between the evidence of P.W.4 and P.W.5. P.W.5 would clearly state that A1 asked P.W.4 as to whether he brought a sum of Rs.25,000/- as demanded by him, while P.W.4 would claim that A1 asked P.W.4 whether he brought a sum of Rs.25,000/- as demanded by him and A2. P.W.5 does not corroborate this part of the deposition of P.W.4. It is further brought out in the evidence of P.W.5 that A1 had also stated that a sum of Rs.25,000/- was for himself and P.W.4 may have to make further payment for others. Thus, it has been brought on record that a sum of Rs.25,000/- paid by P.W.4 represented bribe amount as demanded by A1 alone. As already pointed out, a trap could be laid only against A1 and A3. Trap was successful primarily against A1 and A3. A3 had been acquitted. The Court below had also given a categorical finding that there was no meeting of minds among the accused.

13.Therefore, the only evidence as against A2 is the testimony of P.W.4. P.W.4 does not appear to be a man of character. He wanted assignment of communal grazing land which could not be assigned. He had sold the properties even without getting any patta or assignment. It would be most unsafe to find A2 guilty on the strength of his testimony. I have sustained the conviction of A1 as P.W.5 had corroborated the case of the prosecution. P.W.5 does not corroborate the testimony of P.W.4 as regards A2. Therefore, the conviction imposed on A2 is set aside.

14.Criminal Appeal (MD) No.138 of 2015 is partly allowed. The conviction imposed on A1 is sustained. The sentence of imprisonment imposed on A1-A.Rajangam in respect of charge under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act alone is reduced from two years rigorous imprisonment to one year rigorous imprisonment. The sentence imposed on A1 under Section 7 of the Prevention of Corruption Act and under Sections 13(1)(d) r/w 13(2) of Prevention of Corruption Act will run concurrently.



15. Criminal Appeal (MD)No.139 of 2015 is allowed *toto*. A2 is acquitted of all the charges. The Special Judge shall take steps to enforce this Judgment. The fine amount, if any, paid by A2 shall be refunded forthwith. The bail bond, if any, executed by the appellants shall stand cancelled.

WEB COPY

Sd/-

Assistant Registrar (P AND A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Court for trial of Prevention of Corruption Act cases, Madurai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Madurai.

Copy to:

1. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2c)

CrI.A.(MD)Nos.138 and 139 of 2015
02.11.2020

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