

BAIL SLIP

M.Marimuthu, S/o. Maruthamuthu (Sole Accused), Male aged about 66/2015 years was released on bail vide Court Order dated 05.10.2015 made in MP(MD)No.1 of 2015 in CRL A(MD).No.264 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.10.2019

PRONOUNCED ON : 23.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.264 of 2015

M.Marimuthu

... Petitioner/Appellant

Vs.

The State
by the Inspector of Police,
Vigilance and Anticorruption,
Trichy

...Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to call for the records and set aside the judgment made in Spl.Case No.89 of 2011 dated 10.09.2015 by the Special Judge, Vigilance and Anticorruption, Trichy.

For Appellant : Mr.A.L.Vijeydev Raj

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, Tiruchirappalli in S.C.No.89 of 2011. By order dated 10.09.2015, 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 one year rigorous imprisonment with a fine of Rs.1000/- and in default of payment of fine, to undergo simple imprisonment for one month. 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.1000/- and in default of payment to undergo simple imprisonment for one month and the above said sentences are ordered to run concurrently.

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

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



(i) The *defacto* complainant [PW2] namely Panneer Selvam is a Typist in Anna Planetorium at Trichy. He submitted an application to the Executive Engineer, Tamil Nadu Housing Board, Trichy requesting to allot a house in Sengulam Colony on 05.12.2001 in application No.12646 [Exp3]. Subsequently, he submitted an application for renewal of his request on 16.12.2002, 08.12.2003 and 06.12.2004 [ExsP.4,5 and 6] respectively.

(ii) On 06.12.2004 around 1.00pm the complainant met the appellant / accused officer, who was working as Junior Assistant in the Office of the Executive Engineer, Tamil Nadu Housing Board at Trichy and requested him to take action for allotment of a house at Sengulam Colony. The accused officer demanded a sum of Rs.5,000/- for allotment of house, for which, the complainant asked to allot the house based on the seniority, for that also the accused officer demanded Rs.5,000/- and the complainant replied that he would come next day.

(iii) Again 07.12.2004, the complainant met the accused officer around 1.00pm at his office and requested him to allot the house without getting money. But, the accused officer replied that the house cannot be allotted without money. However, the accused said that he can reduce Rs.1,000/- and demanded to pay Rs.2,000/- in advance and to pay the balance amount after the house is allotted.

(iv) Unwilling to pay the bribe amount the complainant preferred a complaint [Exp6] on 08.12.2004 before the Inspector of Police [PW6]/ Trap Laying Officer [TLO], Vigilance and Anticorruption, Trichy.

(v) Based on the complaint a case in Crime No.10 of 2004 was registered against the accused officer for the offence under Section 7 of the Prevention of Corruption Act and the FIR is marked as Exp.20. Then TLO recorded the statement of the complainant and obtained oral permission for a trap from his superior. Based on his request one V.Sudharsan [PW5], Junior Assistant from the Office of the Assistant Engineer, Agricultural Department, Trichy and N.Anandhan [PW3], Junior Assistant from the Office of the Chief Engineer, PWD, Trichy Division appeared before him at 1.30pm to stand as a shadow witness. TLO introduced the shadow witnesses to PW2 and explained about the complaint given by PW2, to the official witness and handed over a copy of the complaint and FIR to understand the issue. Then the TLO conducted a demonstration about the phenolphthalein test and about the trap. Thereafter, the TLO obtained Rs.2,000/- [MO1 series Rs.100 X 20] intended to be given to the accused officer and the serial number of the currencies were noted in entrustment mahazar [Exp8] and PW2 and the Police party attested the same and later

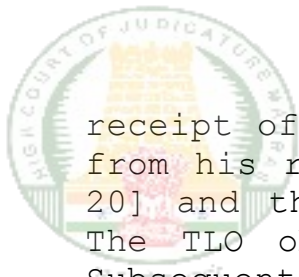


the Police party coated the currencies with phenolphthalein powder and gave them to PW2. The TLO instructed PW2 to meet the accused officer and if the accused officer demands the money, then only he should give the money to the accused officer. PW5 was also directed to accompany PW2 and the TLO instructed them to show signal, after the accused officer received the money.

(vi) Accordingly, on 08.12.2004, PW2 along with PW3 went to the office of the accused officer around 3.45 pm and at that time the accused officer was not available in his seat and hence, PW2 and PW3 came out of the office and waited in a nearby tea shop for 10 minutes and around 4.0pm they again went and met the accused officer, who in turn, asked the PW2 whether he had brought the money and when PW2 replied that he had brought the money, the accused officer asked PW2 to keep the money with himself and the accused officer dictated a petition and PW5 had noted it on a paper and the accused officer asked PW2 to get it typed. After getting it typed from a computer Centre PW2 had also signed in it. Then when they went to the accused seat around 5.00pm he was not there. Hence, they were waiting near the cycle stand and after five minutes, the accused came out and asked PW2 whether he had got the petition typed and he obtained two copies of the same and told, usually it would cost Rs.5,000/- and it was reduced to Rs.4,000/- for him and asked him to give the money. Accordingly, PW2 gave the phenolphthalein coated money to the accused officer, who in turn, received the money by his left hand and through his right hand he kept the same in his right pants' pocket and asked him how much was there and PW2 replied as Rs.2,000/-. The accused officer further asked PW2 to meet him after 15 days and to pay the remaining Rs.2,000/- after the house is allotted. Thereafter, PW2 along with PW5 came out of the office and PW2 showed the pre arranged signal.

(vii) Then TLO asked PW2 as to what happened and PW2 explained. The TLO obtained the written copy of the letter dictated by the accused officer and its typed copy from PW2 and asked them to wait outside. Thereafter, the TLO along with his team went to catch hold of the accused officer, the official witnesses identified the accused officer and the TLO introduced himself to the accused officer and took him to the nearby Public Relationship Office.

(viii) One Ganapathy, Executive Engineer, Tamil Nadu Housing Board was requested to be present there and in his presence, 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 and they were sealed and recovered and marked as MO2 and MO3. When the accused officer was questioned about the



receipt of the bribe money, the accused officer took out the money from his right pants' pocket and there were Rs. 2,000/- [Rs.100 x 20] and the serial numbers tallied with the entrustment mahazar. The TLO obtained the petition copies from the accused officer. Subsequently, the pants' pocket of the accused officer was subjected to phenolphthalein test and the pocket turned in to pink in colour and the solution was preserved in a sealed bottle [M05] and the pants was marked as [M04].

(ix) Subsequently, the accused was arrested around 8.00pm and he prepared an observation mahazar [Exp12] and a rough sketch [Exp21]. With an advance intimation [Exp22] to the concerned Judicial Magistrate, the house of the accused officer was searched and he recovered eight documents produced by the accused officer and he also recovered the documents with regard to the application of the complainant[PW2]. Thereafter, the accused officer was remanded to judicial custody and he placed the matter for further investigation before the Inspector of Police.

3.PW7 the Inspector of Police has taken the investigation in this case. He recorded the statements of the witnesses and obtained chemical analysis report [Exp26] and after completion of the investigation he filed a final report as against the accused officer on 10.07.2006 for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 [herein after referred to as 'PC Act'] before the Special Court for trial of Cases under Prevention of Corruption Act, Tiruchirappalli and the same was taken on file in S.C.No.89 of 2011.

4.During trial On the side of the prosecution seven witnesses were examined, twenty six documents were marked and five material objects produced.

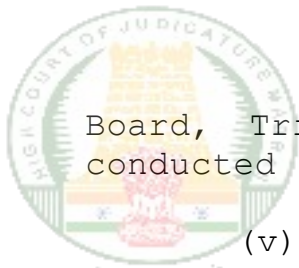
5.The available prosecution evidence are as follows:

(i) PW1 is the then Managing Director, Tamil Nadu Housing Board and he has accorded sanction [Exp1] for prosecuting the appellant.

(ii) PW2 is the defacto complainant and he speaks about the demand made by the appellant and lodging of complaint[Exp2] before the Vigilance and Anticorruption Wing, Tiruchirappalli.

(iii)PW3 is the shadow witness and he speaks about the recovery of the bribe money from the accused officer and the phenolphthalein test conducted in his presence and he is also a witness to the recovery mahazar [Exp.11]

<https://hcservices.ecourts.gov.in/> (iv) PW4 is the then Executive Engineer, Tamil Nadu Housing



Board, Trichy, in whose presence the phenolphthalein test was conducted during the trap.

(v) PW5 is shadow witness and he speaks about the demand and acceptance of the bribe money by the accused officer from PW2.

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(vii) PW6 is the Inspector of Police, Vigilance and Anticorruption Wing, Tiruchirappalli and he speaks about the complaint lodged by PW2, registration FIR, preparation of entrustment mahazar and the trap executed by him and the preparation of observation mahazar, rough sketch, recovery mahazar and the arrest of the appellant.

(viii) PW7 is the Investigating Officer, who conducted the investigation and filed a charge sheet.

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 three witnesses were examined and one document was marked.

7. DW1 is the wife of the appellant. DW2 is the retired Pump Operator. DW3 is the stationery shop owner. The defence theory is made that DW1 wife of the appellant was selling silk sarees in their house and PW2 was known to them through one Thangappan and PW2 has purchased sarees worth about Rs.5,000/- and paid only a part amount of Rs.3,000/- and requested for time to pay the balance amount of Rs.2,000/-. But, he did not pay the amount as promised and on 04.12.2004 when PW2 met the appellant in his office the accused officer scolded PW2 for his not payment of the balance amount to his wife DW1 for the saree purchased. Since the accused officer scolded PW2 in front of others for the saree due, he lodged a complaint in order to take a revenge on him and this amount of Rs.2,000/- received by the appellant officer was due meant for the purchased sarees from DW1. DW2 a retired Pump Operator of the housing board supported this case that he witnessed the appellant officer scolding the PW2 for non payment of the balance amount. DW3 a stationery shop owner has also deposed in a similar line.

8. 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.

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



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

(i) The appellant is not the authority to allot the house to the complainant.

(ii) There is no evidence to prove the demand made by the appellant except the evidence of PW2 complainant.

(iii) As per the Vigilance Manual, the respondent Police has to obtain prior permission from the authority concerned before laying a trap.

(iv) As per Section 17 of the Prevention of Corruption Act, the Deputy Superintendent of Police alone can conduct investigation in this case, whereas, the Inspector of Police has conducted the investigation in this case without any authority.

(v) The sanctioning authority, without application of mind, has accorded sanction mechanically.

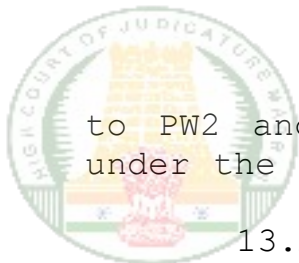
(vi) The statement of the accused was not recorded immediately after the arrest.

(vii) The learned Counsel for the appellant relied on the following judgments.

- 1.State of Maharastra Vs Dnyaneshwar Laxman Rao Wankhede, reported in (2010) 2 SCC (Cri) 385.
- 2.State, Inspector of Police, Visakhapatnam Vs Surya Sankaran Karri, reported in 2006 Cri.L.J.4598.
- 3.State rep by Inspector of Police, Vigilance and AntiCorruption, Dindigul Vs P.Paraman, [CrI.A(MD)No.189 of 2005, dated 25.04.2011]

11.The learned Additional Public Prosecutor appearing for the State submitted that through the evidence of Complainant [PW2], shadow witness [PW3], the earlier demand, reiterated demand and acceptance of the illegal gratification by the appellant has been proved. PW2 has categorically stated that the accused officer demanded illegal gratification for allotment of a house in Tamil Nadu Housing Board, Sengulam Colony, Trichy on 06.12.2004 and 07.12.2004, reiterated and accepted Rs.2,000/-. PW3 the shadow witness also stated that the accused accepted Rs.2,000/- and in his presence, the TLO [PW6] recovered the bribe amount from the accused officer. Further, ExP.26 Chemical Analysis Report reveals that in Mos.1 to 3, Sodium Carbonate and Phenolphthalein were present. Therefore, the prosecution has proved that the accused has demanded and accepted the bribe amount from PW2, which is also corroborated by the Chemical Analysis Report [ExP26].

12.The learned Counsel for the appellant submits that the complainant and officer was not the authority to allot quarters



to PW2 and therefore, he cannot be held liable for the offence under the Prevention of Corruption Act.

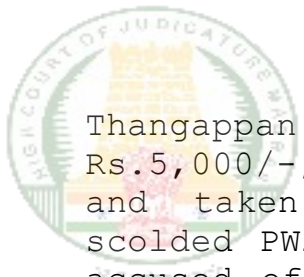
13. According to him the appellant was working as a Junior Assistant, entrusted with maintaining of applications for allotment of Government quarters and he was not the authority to make any allotment of Government quarters to anybody. As per Section 2(c)(viii) of PC Act a public servant means, any person who holds the office by virtue of which, he is authorised to perform any public duty, but, in this case, the accused officer was not authorised to allot the Government quarters and he has no role to play in allotment of Government quarters. Therefore, the appellant cannot be convicted that he received bribe money for allotment of Government quarters.

14. It shall be immaterial whether such person being a public servant obtains or accepts an undue advantage directly or through the third party. Any public servant, who is not in a position to do any favour could also be deemed to commit the offence under the Act, if the demand and acceptance of illegal gratification is proved.

15. The Hon'ble Supreme Court in A.K. Syed Thane Vs State of Karnataka reported in 2012 4 MLJ Crl 263 SC held that whether the accused could or could not deliver results becomes irrelevant when the demand and acceptance of illegal gratification is proved.

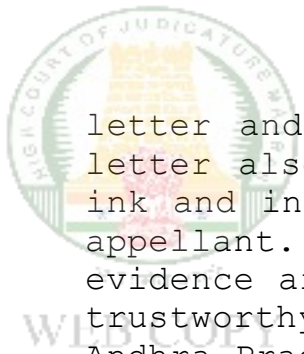
16. PW2 is a State Government employee and he also applied for the allotment of house from Tamil Nadu Housing Board in the year 2001 and his application dated 05.12.2001 submitted to the Executive Engineer, Tamil Nadu Housing Board, Trichy Housing Unit, Trichy was marked as Exp3. He made another application in the year 2004 and his application dated 16.12.2002, which was also forwarded by the Project Director, Anna Science Centre, Trichy was marked as Exp4. Another application was made in the year 2003 and the application dated 08.12.2003 is marked as Exp5. The application dated 06.12.2004 is marked as Exp2. On that day the accused officer has demanded money from PW2 and PW2 has also lodged the complaint [Exp6] before the Inspector of Police [PW6]. The accused officer dictated a letter to the Housing Board Minister and it was taken down by PW5 and the accused officer also directed PW2 to get it typed and the hand written letter and typed letter are also marked as Exp9. The accused officer has also made certain corrections in the letter written by PW5.

17. In this case the receipt of tainted money is accepted by the accused officer. By examining his wife the accused officer projected a defence theory that his wife was selling silk sarees in the name of his house and the accused officer was introduced through one



Thangappan and PW2 has purchased the saree to the tune of Rs.5,000/-, but he did not pay the money at the time of purchase and taken time and therefore, the appellant/accused officer scolded PW2 and as a revenge this complaint has been foisted. The accused officer was working in the Housing Board and he was also dealing with the files pertaining to the allotment of the housing board houses to the State Government Employees. The application made by PW2 for allotment of housing site was recovered from this appellant and also marked as Ex.P2 to Exp5. The said Tangappan, through whom, this PW2 was introduced to the appellant, was not examined in this case as a witness. However, PW2 lodged a specific complaint that he made application for allotment of house from the year 2001 and this accused officer demanded Rs.4,000/- as bribe for taking action on his petition for allotting house in the Tamil Nadu Housing Board and therefore, he lodged a complaint before the Inspector of Police, Vigilance and Anti Corruption Wing and the same was also duly registered in Crime No.10 of 2004 and a trap was also organised in the presence of the official witness PW3 and PW5. The accused officer accepted the bribe amount of Rs.2,000/- from PW2 and it is relevant that this tainted money was recovered from the accused officer in the presence of the official witness and also the Executive Engineer of the Housing Board PW4. The money recovered was compared with the entrustment mahazar and also the phenolphthalein test was conducted in the presence of the official witness from his hand and from the pants' pocket. The tested solutions were preserved and sent for analysis through concerned Judicial Magistrate and the chemical analysis report Exp26 discloses both phenolphthalein and sodium carbonate in the samples referred for analysis. The chemical analysis report is also marked as Exp26.

18.The learned Counsel for the appellant by referring the evidence of PW5 submits that the shadow witness was waiting in the office of the accused officer and PW2 was waiting in cycle stand and therefore, the accused officer came and collected the tainted money and therefore, would contend that this demand has not been corroborated by any other evidence. In fact, first demand was made by accused officer to the PW2 on 06.12.2004 Thereafter, he lodged a complaint and went to the accused office on 08.12.2004, along with PW5. PW5 did not support the case of the prosecution and turned hostile. However, PW3 another official witness the Assistant working in the office of the Assistant Executive Engineer, PW2 would state that PW2 and PW5 went inside and came out of the office for typing the letter dictated by the accused officer informed him that he verified whether PW2 brought the bribe amount and also stated that the actual rate is Rs.5,000/- and a concession made to him as Rs.4,000/- and PW2 was about to give the tainted money, the accused officer asked him to keep the



letter and directed them to get the same typed. After typing the letter also the accused officer made certain corrections in black ink and in this case the receipt of money was not disputed by the appellant. The corroboration is required only if the available evidence are not trustworthy. It appears the evidence of PW2 is of trustworthy. The Hon'ble Supreme Court in C.M.Sharma Vs State of Andhra Pradesh, reported in (2010) 15 SCC 1, has held as follows:

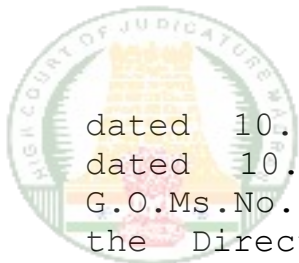
"18.Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law can not countenance such situation.

19.In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record."

19.It is submitted that as per Section 17 of the PC Act, the Deputy Superintendent of Police alone can conduct the investigation in this case.

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.

20.The learned Additional Public Prosecutor referring G.O.Ms.269 of 1990 dated 04.06.1990 contended that the said GO is in conformity with the Notification made in S.R.O.No.3 66 of 1966



dated 10.01.1966. G.O.Ms.No.80 Public (Services-B) Departmentt 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, the ground raised by the appellant is not acceptable.

21.The learned Counsel for the appellant submitted that the sanction authority without application of mind has accorded sanction. It is seen that the sanction authority in his order ExP1 has elaborately discussed about the events took place in the office of the Housing board on 08.12.2004. He has also stated that after carefully scrutinizing the materials such as FIR, Mahazar and recovery mahazar and the statement of witness, chemical analysis report, satisfied that the offence has been committed and accorded sanction to prosecute the accused officer. What is required for a sanction authority is a prima facie satisfaction that the offence has been committed. A reading of ExP1 sanction order discloses the subjective satisfaction arrived at by the Managing Director, Tamil Nadu Housing Board to accord sanction to prosecute the appellant.

22.This Court is of the view that the prosecution has proved the demand, acceptance and recovery of bribe money in this case and therefore, the present criminal appeal is dismissed and the conviction and sentence imposed on the appellant in Spl.Case No.89 of 2011 dated 10.09.2015 by the learned Judge, Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli is hereby confirmed. The trial Court is directed to secure the appellant and confine him to prison, to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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



To

1.The Special Court
for Trial of Cases under the Prevention of
Corruption Act,
Trichy

2.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Trichy,

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

COPY TO

The Record Keeper,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2 CC to M/s.A.L.VIJAYDEVARAJ, Advocate (SR-2794[F] dated
24/01/2020)

judgment made in
Cr1.A.(MD)No.264 of 2015
.01.2020

NS(CO)

TR(24.07.2020)11P 8C