Bail Slip

Petitioner/Appellant/Sole Accused viz., P.N.Santharam, S/o.P.G.Narayana Iyangar, already released on bail vide this Court order dated 29.10.2020 in MP(MD).No.1 of 2015 in Crl.A(MD). No.320/2015.

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.320 of 2015

P.N.Santharam ... Appellant/ Sole Accused

Vs.

State through the Inspector of Police,
Vigilance and Anticorruption Wing,
Tirunelveli.
[Cr.No.07 of 2002] ...Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed against the appellant by the Special Judge for Prevention of Corruption Act Cases in Special Case No.17 of 2014 on 08.10.2015 and acquit the appellant/accused.

For Appellant : Mr.N.Vijayarajan,
for M/s.M.Saravanan

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, Tirunelveli in Spl.C.No.17 of 2014. By order dated 08.10.2015, 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 three years of rigorous imprisonment with a fine of Rs.5000/- and in default of payment of fine, to undergo five months 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 three years rigorous imprisonment with a fine of Rs.5000/- and in default of payment to undergo five 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, D.S.Sundaram [PW2] had worked as a Senior Inspector (Dairying) in Co-Operative Department attached to the office of the Deputy Registrar, Virudhunagar and he retired on 30.06.2002. He was having a sum of Rs.1,93,244/- in his GPF Account. While so, by order dated 17.07.2002, the Accountant General (A & E), Chennai has authorised the Deputy Registrar (dairying), Tirunelveli to withdraw the final settlement amount after preparing and presenting the bill at Hazur Sub Treasury, Tirunelveli. Therefore, the defacto complainant approached the appellant, namely P.N.Santhanam, Deputy Registrar (Dairying), Tirunelveli at his office on 13.08.2002 at about 2.00pm and made enquires with regard to his bill for GPF final settlement. But, the accused officer initially demanded Rs.5,000/- from the defacto complainant as illegal gratification for signing the bill. On the request of the defacto complainant, the accused officer reduced the demand to Rs.3,000/- from Rs.5,000/- and the accused officer instructed the defacto complainant to give the bribe amount to him on 23.08.2002 between 10.00 am and 11.00am at the Co-Operative Society situated at Sidhupoondhurai, if it is not possible, asked him to give the money at 2.00pm at the office of the Deputy Registrar (Dairying), Tirunelveli, the appellant was in charge of the said office.

(ii) Since the defacto complaint [PW2] was not willing to give bribe, he lodged a complaint [ExP2] before the respondent Police on 22.08.2007.

(iii) Based on the complaint [ExP2] a case in Crime No.07 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 [PW10]/ Trap Laying Officer [TLO] and the FIR is marked as ExP.22. Then he recorded the statement of the defacto complainant Based on his request one Panneer Selvam [PW3], Assistant Engineer, TNEB and one Kalyanaraman, Assistant Director, Animal Husbandry Department, Tirunelveli appeared before him at 08.30am on 23.08.2002 to stand as shadow witnesses for the trap proceedings. The TLO introduced the shadow witnesses to PW2, explained about the complaint given by PW2 and handed over a copy of the complaint and FIR, 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.3,000/-[MO1 series Rs.500 X 2 and Rs.100 X 20] intended to be given to the accused officer and the serial number of the currencies were noted in entrustment mahazar [ExP4] and PW2 and the Police party attested the same and 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 23.08.2002, PW2 along with PW3 went to place mentioned by the accused at Sindhupoondhurai around 10.15am and waited there till 1.00pm, but it was informed them that the accused officer had gone to the Deputy Registrar Office (Diariryng), Tirunelveli. Accordingly, the defacto complainant along with PW3 and the police party went to the office of the accused officer around 1.30 pm. They waited out side the chamber of the accused officer and the PW2 identified the accused officer to PW3 shadow witness. Around 2.00pm he informed the Office Assistant Subramanian that they have to meet the accused officer and it was replied to meet the accused officer, after he finishes his lunch at 2.00pm. Then at 2.15pm PW2 and PW3 went inside the office of the accused officer. On seeing them, the accused officer enquired about PW3 and the PW2 informed him that PW3 is his son-in-law. When PW2 requested the accused officer to sign the bill, the accused officer asked him whether he had brought the demanded money. PW2 replied that he had brought the money 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 a cupboard in the table, locked it and kept the key in his pants 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 what happened inside the office of the accused officer and PW2 explained that the accused officer received the tainted money. Thereafter, the TLO along with his team went inside the office. PW2 identified the accused officer to the TLO. The TLO introduced himself to the accused officer. Then sodium carbonate solution was prepared in a glass tumbler and fingers of the right hand of the accused officer were immersed in them and on immersion, the solution turned into pink in colour and it was sealed, recovered and marked as MO3 and it was signed by the TLO and the official witnesses. On enquiry, the accused officer opened the cupboard, took the money and kept the same on the table. On his instructions, the official witness Kalyanaraman counted the money, compared with the entrustment mahazar and the same was tallied. As per his information, the Deputy Superintendent of Police [PW11], arrested the accused around 4.00pm. The TLO prepared a rough sketch [ExP23].

3.The Deputy Superintendent of Police [PW11] has taken over the investigation in this case. He recorded the statements of the witnesses and obtained chemical analysis report [ExP20] and the completed the investigation in this case. One Malukmuthali, Deputy Superintendent of Police, taken charge of this case and 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, Tirunelveli and the same was taken on file in Spl.C.No.17 of 2014.

4.During trial On the side of the prosecution 11 witnesses were examined, 26 documents were marked and 3 material objects were produced.

5.The available prosecution evidence are as follows:

(i) PW1 is the then Secretary to Government, Animal Husbandry and Fisheries Department and he has deposed that only 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, Tirunelveli 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 then Development Assistant at District Registrar (Diarying) office, Virudhunagar and he speaks about the sanction accorded by the Accountant General towards withdrawal of GPF amount and he speaks about the transfer of the defacto complainant from Virudhunagar to Tirunelveli.

(v) PW5 is the then District Treasury Officer, Tirunelveli and he speaks about the documents produced by him with regard to the defacto complainant.

(vi) PW6 is the then Sub Registrar (Diarying) and he speaks about the inspection done by him on the complaint given against the defacto complainant and his recommendation for enquiry under Section 81 of the Co-Operative Societies Act.

(vii) PW7 is the then Senior Inspector (Diarying), Kovilpatti and he speaks about the maintenance of files relating to the enquiry on the complaint against the defacto complainant and he speaks about the disciplinary proceedings initiated on the defacto complainant.

(viii)PW8 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 [ExP20].

(ix)PW9 is the then Junior Assistant of Chief Judicial Magistrate, Tirunelveli and he speaks about the sending of MOs for analysis to the Forensic Science Department and the receipt of the chemical analysis report.

(x) PW10 is the Trap Laying Officer. He speaks about the complaint lodged by PW2, registration FIR in Crime No.7 of 2002, summoning of official witnesses, preparation of entrustment mahazar, conducting of 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

(xi)PW11 is the Investigating Officer, who recorded the statements of the witness and filing of the final report against the accused officer.

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 no witness was examined, however, five documents were marked as exhibits.

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)According to the prosecution the appellant demanded Rs.3,000/- from the PW2 on 13.08.2002 at his office at Tirunelveli to sign his GPF final settlement bill and the appellant had obtained the bribe amount of Rs.3,000/- from PW2 on 23.08.2002 at Tirunelveli Office, but the prosecution has not established the charges levelled against the appellant.

(ii)PW2 had strong enmity against the accused officer, since PW2 was given charge memo on five occasions by the appellant and the appellant initiated disciplinary proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and in conclusion of the proceedings, PW12 was imposed a penalty of stoppage of increment for three months and therefore, PW2 had given a false complaint in order to take revenge on the appellant.

(iii) The Accountant General has authorised Deputy Registrar (Dairying), Tirunelveli to draw the final settlement of GPF amount of PW2. However, PW2 was transferred to Virudhunagar from Tirunelveli and so, the Last Pay drawn Certificate was also issued.

Therefore, Deputy Registrar (Dairying), Tirunelveli cannot drawn the final settlement of PW2's GPF amount based on the AG's Authorisation.

(iv) According to PW2, when he met the appellant at Tirunelveli in his office on 13.08.2002, the appellant had demanded money and at that time Co-Operative Sub Registrar and an Office Assistant were there. But, the prosecution did not examine any of them. Therefore, non examination of either of them is fatal to the prosecution case.

(v) There are contradictions in the evidence of PW3 and PW10 with regard to the Mahazar ExP5 and the signatures of the PW3 and PW10 were not sent for comparison with the signatures found on MO3.

(vi) There are material contradictions between the evidence of defacto complainant [PW2], official witness[PW3] and the TLO [PW10].

(vii) According to PW2, he had waited out side the chamber of the appellant for an hour. Therefore, it is clear that PW2 was waiting for an opportunity to plant the tainted money into the table drawer of the accused. Accordingly, PW2 had stealthily planted the tainted money into the table drawer, when the appellant was taking his lunch in the adjoining room and therefore, the accused has proved his defence with preponderance of probabilities in this case.

(viii) The learned Counsel for the appellant, by placing reliance upon the Treasury Code, would submit that since this Accused Officer (AO) has returned the proposal of the complainant [PW2] for GPF on 08.08.2012, this complaint is lodged with some motive.

(ix) According to the learned Counsel for the appellant, as per Rule 23 of the Treasury Code, no withdrawal shall be permitted on a claim for the first of any series of payments in a district of pay or allowance to a Government servant, other than a person newly appointed to Government Service, unless the claim is supported by last pay certificate in such form, as may be prescribed by the Comptroller and Auditor General of India. A Treasury Officer may not permit any withdrawal in respect of pay or allowance of a Government Servant to whom he has granted a last pay certificate, unless the certificate is first surrendered.

(x) According to the learned Counsel for the appellant, though a proposal was made for drawing the GPF amount to the complainant, it was made from the Office of Tirunelveli Region, but, pending the processing of that application, the complainant was transferred to Virudhunagar Region and therefore, a new proposal has to be made from the Office of Virudhunagar with the last pay certificate and the Accountant General has to be intimated about the order of transfer and only after a fresh proposal, the amount can be disbursed. Therefore, it was rightly rejected by the Accused Officer (AO) on the application submitted by PW4 (concerned Clerk) in this regard. Aggrieved over the same, the complainant has foisted this complaint against the Accused Officer (AO). The learned Counsel also placed reliance on the following judgments:

1.Bhim Singh Vs State of Haryana, reported in (2002) 10 SCC 461;
2.B.Jayaraj Vs State of A.P, reported in (2014) 2 MLJ (Crl) 358;
3.Panalal Damodar Rathi Vs State of Maharastra 1980 SCC (Crl) 12;
4.K.P.Kolanthai Vs State by Inspector, V&AC, Dharmapuri, (2019) MLJ (Crl) 713;
5.Madan Mohan Singh Vs State of U.P, reported in AIR 1954 SC 637;
6.Bansari Dass Vs State of Haryana, reported in (2010) 3 MLJ (Crl) 132;
7.State of Punjav Vs Sohan Singh, reported in (2009) 2 SCC (Crl) 1080;
8.Ganapathi Sanya Naik Vs State of Karnataka, reported in (2007) 8 SCC 309;

10.Per contra, the learned Additional Public Prosecutor, by relying upon Ex.P9, would submit that the authority for disbursing the GPF amount is the Accountant General of Tamil Nadu and he, by proceedings dated 31.05.2002, has accorded sanction to the Deputy Registrar (Dairying), Tirunelveli, to draw a sum of Rs.1,93,244/- to Mr.D.S.Sundaram (complainant), Senior Inspector, A/c.No.5016/COOP. In the said proceedings, it is also referred to about the application of the complainant dated 21.03.2002. As per the proceedings of the Accountant General, it represents the available balance in the GPF account of the complainant with interest thereon upto 06/2002 and payment shall be made to the complainant on proper identification. When the authority, namely, the Accountant General has calculated the quantum of amount on the GPF account of the complainant, with interest upto 06/2002 and ordered to disburse the same on proper identification as per Rule 28 of GPF (TN) Rules, the ground raised by the learned Counsel for the appellant relying upon the Treasury Code would not be applicable in this case.

11.Moreover, according to the learned Additional Public Prosecutor, the Accused Officer (AO) is the Officer in-charge of Tirunelveli as well as Virudhunagar Region. The learned Additional Public Prosecutor has also relied upon Ex.P11, the letter of the Treasury Officer, Tirunelveli to the Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirunelveli, wherein, the Treasury Officer has stated that the Accountant General's GPF payment authorisation in respect of the complainant [Mr.D.S.Sundaram] for a sum of Rs.1,93,244/- has been kept pending in the Office of the Treasury Department, Tirunelveli, for want of presentation of bill by the Drawing Officer, Tirunelveli, namely, Deputy Registrar (Dairying), Tirunelveli. The bill has not been presented with the original authorisation of the Drawing Officer till that date and therefore, the amount was not disbursed to the complainant. It is also mentioned that the validity period of the authorisation is for six months and therefore, according to the learned Additional Public Prosecutor, there is no necessity for a fresh proposal, as contended by the learned Counsel for the appellant.

12.The learned Counsel for the appellant further submitted that the evidence of PW5 / Treasury Officer as well as PW2 in this regard has to be considered that the concerned authority, namely, PW5 has specifically stated that since the complainant was transferred from Tirunelveli to Virudhunagar region, the amount could only be disbursed only after getting the new proposal from Virudhunagar Office. According to PW2, the GPF amount was disbursed to the complainant, only after the proposal made from the Virudhunagar Office. But, according to the learned Additional Public Prosecutor, this statement of PW5 before the Court is not found place in the letter addressed to the investigation officer.

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

14.Insofar as the ground that the prosecution has not proved the case is concerned, 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 [PW10] and the same is also proved by the phenolphthalein test conducted on the right hand of the appellant. Further, the evidence of the Scientific Officer [PW6] and the chemical analysis report also corroborate the recovery of tainted money from the possession of the accused officer. Therefore, the prosecution has established the demand, acceptance and recovery of illegal gratification in this case.

15.It is stated that PW2 was transferred from Tirunelveli to Virudhunagar during April 2002 and the LPC was also sent to the Virudhunagar Office. So, the final withdrawal of GPF amount cannot be done at the office of the Tirunelveli and it can only be done at Virudhunagar Office. Therefore, there is no possibility for the appellant to demand the money from PW2 at Tiruneveli. Though the appellant was working as Deputy Registrar (Dairying), Virudhunagar, he was holding the Additional Charge of Deputy Registrar (Tirunelveli) during the relevant point of time. As rightly held by the trial Court, whether it is at Tirunelveli or at Virudhunagar, it the appellant, who had to sign in the bill. Therefore, ground regarding the possibility of demand is not sustainable.

16.Insofar as the motive attributed by the appellant that since the appellant has issued five charge memos to the PW2 and imposed a punishment of stoppage of three months increment, a false complaint has been foisted against the appellant. 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".*

Merely because the appellant has taken action on the PW2, it cannot be stated that the case of the complainant is false, when it is clearly established by the cogent evidence and supported by documents. Therefore, such a ground is not acceptable.

17.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 right hand of the appellant/accused officer has also proved positive.

18.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."*

19.The defence taken by the appellant is that the PW2 has planted the tainted money into the drawer of the appellant, when he was having lunch in the nearby room. But, the defacto complainant [PW2] and the official witness [PW3] clearly deposed that the appellant has received the tainted money with his right hand, kept the same in the drawer of his table, locked it and retained the key in his pants pocket. Further, evidence of the TLO [PW10] that on enquiry, the appellant had taken the tainted money from his table drawer and placed it on the table corroborates the evidence of PW2 and PW3. Therefore, such a defence lacks merits and the same is rejected.

20.The prosecution has established their case and therefore, this Court is not inclined to interfere with the order of the trial Court. But, during the course of arguments, it is represented by the learned Counsel for the appellant that the appellant is aged about 75 years and is suffering from several ailments and therefore, as an alternate remedy, prayed for reduction of sentence. Considering the said plea, this Court, while confirming the conviction imposed on the appellant in Spl.C.No.17 of 2014, dated 08.10.2015 by the

Special Judge for trial of cases under Prevention of Corruption Act, Tirunelveli, modifies the sentence of imprisonment to one year, instead of three years, for the offence under Section 7 and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, respectively. The sentence of imprisonment shall run concurrently. However, the fine amount and the default clause as ordered by the trial Court remain unaltered. 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.

In fine, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Special Judge,
for trial of cases under
Prevention of Corruption Act,
Tirunelveli

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

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.

+1cc to Mr.M.Saravanan, Advocate Sr.No.5921

judgment made in
Crl.A.(MD)No.320 of 2015

12.02.2020

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NR (04/01/2020) 11P : 7C