



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Criminal Appellate Jurisdiction

Tuesday, the Twenty Second day of September Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL A(MD) No.6 of 2015

State of Tamil Nadu rep. by
the Public Prosecutor,
High Court, Madras 104.

... Appellant

/ VERSUS /

N.Vijayakumar

Formerly Sanitary Inspector, 8th Ward ,
Corporation of Madurai, Madurai Presently
Residing at. No.21a, Mudaliarkottai, Nadutheru,
Sholavandan, Madurai.

... Respondent/Accused

Criminal Appeal is filed under Section 378 of Criminal Procedure Code, praying this Court to set aside the judgment dated 25.02.2014 made in Spl.C.C.No. 49 of 2011 on the file of the Special Judge for Trial of Prevention of Corruption Act Cases, Madurai and convict and sentence the Respondent/Accused.

ORDER:- This Criminal Appeal coming on for orders on this day and upon perusing the grounds of Appeal and the earlier orders of this Court and upon hearing the arguments of Thiru.M.Chandrasekaran, Additional Public Prosecutor for the Appellant and of M/S.Ragaventhini for Thiru.V.Kathirvelu, Senior counsel for Mr.K.Prabhu, Advocate for the respondent, this Court made the following order:

The Appeal is listed today i.e., on 22.09.2020 under the caption 'For Being Mentioned' at the instance of this Court.

2.This Court in continuation and conjunction of the judgment dated 28.08.2020 and further orders dated 14.09.2020 and 15.09.2020, passing the following order.

3.The trial Court in Special C.C.No.49 of 2011 had framed charge against the respondent/sole accused for commission of offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The trial Court vide impugned judgment dated 25.02.2014 in Special C.C.No.49 of 2011, found the respondent/sole accused not guilty and acquitted him for commission of offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 under the provision of Section 248(1) of Cr.P.C.



4.Challenging the judgment of the trial Court for acquitting the respondent/sole accused, State had preferred this appeal.

5.This Court vide judgment dated 28.08.2020 had reversed the judgment of the trial Court in acquitting the respondent/sole accused, convicted him for commission of offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and directed to list the appeal on 14.09.2020 for his appearance regarding the question of quantum of sentence. The matter was listed on 14.09.2020, it was brought to the knowledge of this Court that on account of illness, the respondent/sole accused got admitted in Apollo Hospital, Madurai on 16.08.2020 and discharged on 25.08.2020 and was advised to be quarantined and therefore, time was sought. Accordingly, the case was adjourned to 28.09.2020 with a direction, directing the respondent/sole accused to either surrender or the concerned Police to secure him, further in any case, the respondent/sole accused shall be produced before this Court on 28.09.2020.

6.On 15.09.2020, the learned Senior Counsel appearing for the respondent/sole accused made a mention that the respondent/sole accused is ready to appear before this Court and accordingly, the matter was taken by 02.00 p.m. through video conference and on appearance through video conference, the respondent/accused was questioned and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, for commission of offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, in default to undergo three months Simple Imprisonment and further directed the respondent/accused to pay the fine amount before the Registry of this Court.

7.The respondent/sole accused also granted set off under Section 428 Cr.P.C. Subsequently, this Court became aware that the respondent/sole accused was charged for offence under Section 7 of the Prevention of Corruption Act, 1988 also and the trial Court, while acquitting the respondent/sole accused vide judgment dated 25.02.2014 in Special C.C.No.49 of 2011, did not notice that he was also charged for commission of offence under Section 7 of the Prevention of Corruption Act, 1988 and therefore, this Court following the same, reversed the judgment of acquittal insofar as Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

8.M/s.Ragaventhini [Enrollment No.2038/2015] for Mr.V.Kathirvelu, learned senior counsel appearing for the respondent/sole accused submitted the she has been briefed by her senior and she is aware of the facts of the case.



9.Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing on behalf of the appellant submitted that the respondent/sole accused on conviction, complained some discomfort and chest pain. Due to which, the respondent/sole accused was taken to Government Rajaji Hospital, Madurai, admitted in convict ward and he is in custody of the Superintendent of Prison, Central Prison, Madurai with police escort. The learned Additional Public Prosecutor on instruction from the Dean submitted that the respondent is now stable and he would be sent to jail. This information was got on 19.09.2020. But, he is still in the hospital. Hence, this Court may issue a direction to the Superintendent of Prison, Central Prison, Madurai to produce the respondent/sole accused before this Court for question of 'Quantum of Sentence, after getting discharge report from the hospital.

10.This Court heard the submissions of the learned counsel appearing for the respondent/sole accused and the learned Additional Public Prosecutor.

11.In the considered opinion of this Court, it is merely an inadvertent mistake and as such Section 362 Cr.P.C would not act as a bar. Therefore, this Court is inclined to convict the respondent/sole accused for offence under Section 7 of the Prevention of Corruption Act, 1988.

12.Accordingly, this Court directs the Superintendent of Prison, Central Prison, Madurai to produce the respondent/sole accused in connection with Special C.C.No.49 of 2011 on the file of the Special Judge for trial of Prevention of Corruption Act, Cases, Madurai, before this Court, through video conference on 29.09.2020 at about 10.30 a.m., for question of Quantum of Sentence. The Dean, Government Rajaji Hospital, Madurai is to produce the medical records for the treatment given to the respondent/sole accused from the date on which he got admitted in the hospital.

13.List the matter under the caption 'For appearance of the respondent/accused' on 29.09.2020, at 10.30 a.m.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1. The Special Judge for Trial of
Prevention of Corruption Act Cases,
Madurai.
2. Th Inspector of Police, Vigilance and Anti Corruption, Madurai.
3. The Superintendent, Central Prison, Madurai.
4. The Dean, Government Rajaji Hospital, Madurai.
5. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 22/09/2020

HEARING DATE : 29.09.2020

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ORDER
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CRL A(MD). No.6 of 2015

Giving direction and etc.
as stated within.

SGS (CO)
TR(23.09.2020) 4P 7C