BAIL SLIP

Mr.A.K.Chellamuthu, S/o.Kandasamy Gounder, age 64 years was released on bail vide Court order dated 09.06.2016 in Crl MP(MD) No.4466 of 2016 in Crl A(MD)No.196 of 2006.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.12.2020
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
CRL A (MD) No.196 of 2016

A.K.Chellamuthu ... Appellant / Accused

Vs.

The State,
rep.by the Inspector of Police,
Vigilance and Anti Corruption Unit,
Dindigul. ... Respondent / Complainant

Prayer : This Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the judgment made in Special Case No.36 of 2014 on the file of the Chief Judicial Magistrate (Special Court for Vigilance and Anti Corruption Act Cases), Dindigul.

For Appellant : Mr.T.Mohan for Mr.D.Venkatesh

For Respondent : Mr.A.Robinson,
Government Advocate (crl.side)

JUDGMENT

This appeal is directed against the judgment dated 26.05.2016 passed by the learned Chief Judicial Magistrate/Special Judge for Prevention of Corruption Act Cases, Dindigul in S.C No.36 of 2014. By the impugned judgment, the appellant has been found guilty of the offences under Section 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced as follows :

Offence	Sentence
Under Section 7 of the PC Act	Six months rigorous imprisonment and to pay a fine of Rs.1,000/-, in default of payment of fine, one month simple imprisonment
13(2) r/w.13(1)(d) of the PC Act	One year rigorous imprisonment and to pay a fine of Rs.1,000/- in default of payment of fine, three months simple imprisonment

The case of the prosecution is as follows :

2.The appellant A.K.Chellamuthu was working as Village Administrative Officer at Thalaiyuthu Village in Palani Taluk from 29.01.2009 to 20.04.2010. PW.2 K.Vijayaraj purchased a house at Natham and he wanted to obtain mutation of revenue records in his name. He therefore approached the appellant and asked for mutation of patta. The appellant is said to have demanded payment of illegal gratification on more than one occasion. Since PW.2 did not want to pay any illegal gratification, he approached the respondent and lodged Ex.P8 complaint on 20.04.2010. Based on same, PW.10 registered FIR Ex.P32 in Crime No.4 of 2010 for the offences under Section 7 of the Act. PW.10 requested the services of the shadow witnesses namely, PW.3 Deivendran and Mr.G.Ramesh from TNEB. PW.10 carried out all the pre-trap formalities and also prepared Ex.P10 entrustment mahazar. Thereafter, the trap laying party left the office of the respondent at Noon time. The trap laying party reached the office of the accused at around 01.30 P.M. PW.2/the defacto complainant Vijayaraj and PW.3 Deivendran entered the office of the accused and PW.2 enquired him about the patta issue. The accused was said to have reiterated his earlier demand. Thereupon, PW.2 took out the tainted currency notes and left it on the table of the accused. Thereafter, PW.2 and PW.3 came out of the office and gave the pre-arranged signal. Immediately, PW.10 Sathyaseelan and others came and after confirming with PW.2 that the money had been passed on, entered the office of the Village Administrative Officer. PW.2 identified the accused. Thereupon, the accused was subjected to phenolphthalein test. The test turned positive. The solution in which the accused dipped his hands were collected in bottles and they were also sealed. Thereafter, the powder applied currency notes (MO.1) were also sealed under cover of mahazar (Ex.P14). PW.11 took over the investigation from PW.10 and after examining all other witnesses and after obtaining Ex.P1 sanction from PW.1 filed the final report.

3.Cognizance of the offences under Section 7 and Section 13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988 was taken. Summon was issued to the accused. Copies were served under Section 207 Cr.PC. Charges were framed for the aforesaid offences. The accused denied the charges and claimed to be tried. The prosecution in order to prove its case examined PW.1 to PW.11 and marked Exs.P1 to P32. MO.1 to MO.3 were marked. Incriminating circumstances were put to the accused under Section 313 of Cr.PC. The accused denied them as false and came out with his defence version. The accused also examined one Bashyam as DW.1 and marked Exs.D1 to D3. After considering the evidence on record, the learned Trial Judge convicted and sentenced the accused as mentioned above. Questioning the same, this criminal appeal has been filed.

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and also the written submissions. He wanted me to set aside the impugned judgment and acquit the appellant and allow this criminal appeal. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference. He called upon this Court to dismiss this appeal as devoid of merits.

5.I carefully considered evidence on record. It is not in dispute that the appellant was the Village Administrative Officer of Thalaiyuthu Village during the relevant time. He had processed the patta transfer application (Ex.P2) submitted by PW.2. The question that arises for consideration is whether the prosecution had established its case beyond reasonable doubt. The learned counsel appearing for the appellant would draw my attention to the decision reported in ***(2000) 5 SCC 21 (Meena vs. State of Maharastra)*** and contended that mere recovery of the tainted notes or the fact that the phenolphthalein test turned positive will not be decisive of the issue. He pointedly contended that the prosecution is obliged to establish the demand for payment of illegal gratification. His further contention is that if the accused established his defence by applying the principle of preponderance of probability, then this Court ought to set aside the impugned judgment and acquit the accused.

6.The learned Government Advocate (crl.side) would point out that the demand for payment of illegal gratification was made on more than one occasion. According to him, the demand was made on 30.03.2010, 05.04.2010, 13.04.2010, 17.04.2010. That apart, on the trap date ie., 20.04.2010, the accused had also reiterated his demand for illegal gratification. The Government counsel states that the prosecution had proved that the accused made demand for payment of illegal gratification by examining PW.2 and PW.3. He would point out that PW.3 was working in the Education Department and he has no axe to grind against the accused. He is an independent witness and that therefore, he has no animus against the accused. PW.3 has clearly deposed that the accused asked PW.2 as to whether he has brought the money. Therefore, according to the learned Government Counsel, there is ample corroboration. He would also point out that the recovery of money was after the phenolphthalein test was conducted and that the accused had handled M.O.1 series has been established beyond reasonable doubt.

7.Though the submissions of the learned Government Counsel are persuasive, the following circumstances will have to be taken note of by this Court : (i) PW.4 Tmt.Kalavathi was working as Village Assistant in the Office of the Village Administrative Officer, Thalaiyuthu. In fact, her seat was virtually next to that of the accused. It is necessary to note here that she was examined as prosecution witness. She clearly deposed that PW.2 approached the accused some twenty days prior to the occurrence and that on his request, she wrote out the application for patta transfer (Ex.P2). In fact, PW.2 had only affixed his signature in Ex.P2. But, Ex.P8 complaint is completely silent on this aspect. According to Ex.P8, PW.2 had gone to the office of the accused on 05.04.2010 and informed him that he wanted to have the patta changed. PW.8 would state that he had forwarded the application to the accused on

31.03.2010 itself. But strangely in his deposition PW.2 would state that he met the accused in his office at 11.30 A.M on 30.03.2010. Ex.P8 is a typed complaint. PW.2 would state that he had met the accused on 17.04.2010 and that the accused demanded the illegal gratification of Rs.5,000/-. Since PW.2 did not want to pay any bribe amount, he has given the complaint. Such a complaint ought to contain all details. But, it is conspicuously silent as regards PW.4 writing out Ex.P2 much earlier.

8.The learned counsel appearing for the appellant would state that on 30.03.2010, the accused had gone to Thoppampatti to participate in a review meeting and that the said meeting was going from 10.00 a.m to 3.00 p.m. The case of PW.2 in his deposition is that he met the accused at around 11.30 A.M on 30.03.2010. This is considerably shaken by the testimony of PW.6. PW.6 was working as Revenue Inspector in Korikadavu Section, Palani Taluk and Thalaiyuthu Village was under him. PW.6 categorically depose that on 30.03.2010 at Thoppampatti Panchayat Union, there was a meeting of VAOs. He also depose that normally the said meeting will commence at 10.00 A.M and conclude at 03.00 PM. The learned counsel for the appellant stated that since such specific answers had been given by PW.6, it was definitely incumbent on the part of the prosecution to have done a reexamination and elicit as to whether the accused came to the said meeting late. Such a clarification was not obtained in the re-examination of PW.6. The specific stand of PW.2 that he met the accused on 30.03.2010 at 11.30 A.M in his office is considerably shaken by the aforesaid two circumstances, namely, non-reference to the same in Ex.P8 complaint and the testimony of PW.6 regarding the attendance of the accused in the review meeting held at Thoppampatty Village. There is no reference to the demand said to have made on 05.04.2010. It has been clearly brought out in evidence that PW.2 Vijayaraj is a tenant under one Vengudusamy. The said Vengudusamy is a lawyer by profession. He was also the past panchayat president. Malathi is his wife. She had given an application for patta transfer. In the said application, the accused officer had made an endorsement that the land in question had already been taken under the ceiling laws. This endorsement was made on 09.01.2010. Based on the same, the Tahsildar asked for a detailed report and on 07.04.2010. The detailed report was submitted by the accused officer. This is clearly spoken to by DW.1 Bashyam who was employed as Personal Assistant to RDO, Palani. That apart, there was a pending civil dispute between PW.2 on the one hand and one Kaliathal on the other. The said Kaliathal is the first cousin of the accused. In fact, in the cross examination, the suit number had also been mentioned. In January, 2010 itself notice had been issued to the said Kaliathal. PW.2 was under the impression that it is the accused who was supporting the said Kaliathal. The submission of the learned counsel for the appellant is that there has been convergence of motive. The landlord of PW.2 was ill-disposed against the accused because the accused had given detailed report regarding request for patta transfer made by him. Secondly, PW.2 was facing a civil dispute at the hands of the first cousin of the accused. Therefore, in order to wreak vengeance on the accused, the entire trap had been engineered.

9.I find considerable force in the submissions of the learned counsel for the appellant. More than anything else, it has been convincingly brought out in evidence that the accused had favourably recommended the request of PW.2 on 12.04.2010 itself. The papers had also been dispatched to the office of the Tahsildar, Palani. These records were seized by the Trap Laying Officer and forwarded to the jurisdictional court on 21.04.2010. Thus, by 12.04.2010 itself, the accused had done favour to PW.2. In fact, he could not have dealt with the file thereafter. PW.4 Kalavathi was sitting virtually next to the accused when the trap was organised. PW.3 would claim that the accused made a demand for payment of illegal gratification in the presence of Kalavathi. If he had made such a demand, certainly, it would have been noticed by Kalavathi. PW.4 does not say anything about it. Silence of Kalavathi on the so called demand made by the accused is significant. Therefore, I have to necessarily hold that the prosecution has not established its case against the accused beyond reasonable doubt.

10.The appellant is acquitted. The appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount if any paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Skm

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 Chief Judicial Magistrate/Special Judge for Trial of PC Act Cases,
Dindigul.

2.The Inspector of Police,
Vigilance and Anti Corruption Unit,
Dindigul.

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

+1cc to Mr.D.VENKATESH, ADVOCATE, SR NO 26772

CRL A (MD) No.196 of 2016
18.12.2020

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