



Bail Slip

S.Rengasamy, S/o.Sellamuthu, male, aged about 57/16, (Sole Accused) is released on Bail vide Court order dated 24.11.2016 made in CRL.MP(MD)NO.11332/2016 in CRL.A(MD).NO.435/2016.

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	:	15.10.2020
Pronounced on	:	29.10.2020

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.435 of 2016

S.Rengasamy

... Appellant/Sole Accused

Vs.

The State of Tamil Nadu,
Represented by its
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai,
Sivagangai District.
(Crime No.08 of 2000)

... Respondent

Prayer : Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records of the Judgment dated 05.11.2016 in Special C.C No.4 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Sivagangai District in Crime No.8 of 2000 on the file of the Respondent Police and set aside the same and acquit the appellant/sole accused.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal is directed against the Judgment dated 05.11.2016 made in Special C.C.No.4 of 2014 on the file of the Special Court for trial of Prevention of Corruption Act cases, Sivagangai. By the impugned judgment the appellant has been convicted and sentenced as follows:



Charge	Sentence
Under Section 7 of Prevention of Corruption Act	To undergo 3 years Rigorous Imprisonment and imposed fine of Rs.1,000/- in default 6 months Rigorous Imprisonment
Under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act	To undergo 3 years Rigorous Imprisonment and imposed fine of Rs.1,000/- in default 6 months Rigorous Imprisonment

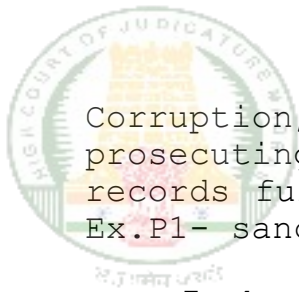
2.The appellant was working as an Inspector at Karaikudi North Police Station during the year 2000. In Karaikudi, one Muthuram owned commercial building known as M.R.Complex. There were a number of shops in the complex. One Ragupathi was a tenant in respect of one of the shops. He was running a medical shop. On 12.12.2000 at night time, a fire accident occurred in the said shop. In that regard Crime No. 423 of 2000 was registered. The appellant was the investigation officer in the said case. He allegedly demanded a sum of Rs.5,000/- as illegal gratification for not implicating the said Muthuraman, the building owner. The said amount was subsequently reduced to Rs.3000/-. On 14.12.2000 at about 6.00 p.m., the appellant is said to have come to the said complex and in the presence of the decoy witness Thiyagarajan, accepted the illegal gratification from Asokan, son of Muthuraman. Therefore, the final report was filed against the appellant for having committed the offences under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. It was taken on file and charges were framed against the appellant. The appellant denied the charges and claimed to be tried. The prosecution examined 11 witnesses and marked Exs. P1 to P23 and MOs.1 to 6. On the side of the accused no evidence was adduced .

3.The learned Trial Court after a consideration of the evidence on records found the appellant guilty and sentenced him as mentioned above. Challenging the same this appeal came to be filed.

4.The learned counsel for the appellant reiterated the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned judgment and allow this appeal and acquit the appellant.

5.Per contra, the learned Government counsel contended that the impugned judgment does not warrant any interference and dismiss the appeal.

6.I carefully considered the rival contentions and went through the evidence on record. PW.1 Sanjeev Kumar was the jurisdictional DIG of Police during the relevant time. He deposed that on 18.08.2015 he received a letter from the Director General of Police enclosing a letter from the Director of Vigilance and Anti



Corruption, Chennai requesting issuance of sanction order for prosecuting the appellant. PW.1 testified that he perused all the records fully, applied his mind and after satisfying himself issued Ex.P1- sanction order dated 24.10.2001.

7.The learned counsel for the appellant pointed out that PW.1 was not a Tamilian. PW.1 admitted that most of the documents were in Tamil. When questioned as to how they understood their contents, PW.1 claimed that translation was made available to him and based on the same he granted the sanction order. To a question as to where were those translation copies, PW1 claimed that he had destroyed them.

8.Based on this, the learned counsel for the appellant would contend that the sanction order granted by PW.1 was void. He strongly contended that PW.1 had signed mechanically in the typed version and that it cannot be called as a valid sanction order. The learned counsel would point out that existence of valid sanction order is a condition precedent for taking cognizance of the offence. In as much as PW.1 did not pass a valid sanction order, the entire proceeding is liable to be invalidated. The learned counsel placed reliance on quite a few decisions to emphasise the importance of passing a valid sanction order.

9.I am not impressed with the said submission. Ex.P1 is in English. In fact, it is extremely elaborate and detailed. It refers to the case of the prosecution in extenso. The satisfaction of the sanctioning authority is quite evident.

10.As rightly pointed out by the learned Government Advocate, as held in the decision reported in **(2013) 8 SCC 119 (State of Maharashtra Vs. Mahesh G. Jain)**, adequacy of material placed before the authority cannot be examined by the Court. It is essentially an administrative function and only *prima-facie* satisfaction of sanctioning authority was needed. The legislative object behind Section 19 of the Act is to ensure that the officers who are discharging their duties in good faith are not vexed. I sustain the contention of the learned Government Advocate that there has been a consideration of the case of the appellant by the sanctioning authority and only thereafter green signal was given. I am satisfied that the sanctioning authority has recorded more than *prima facie* satisfaction. The contention of the appellant's counsel that the sanction order given by PW.1 is invalid cannot be accepted.

11.The prosecution had examined PW.2-Asokan, PW.7-Raja Mohammed to establish the charge that the appellant had demanded payment of illegal gratification. The learned counsel for the appellant would contend that both these witnesses cannot be believed. Raja Mohammed

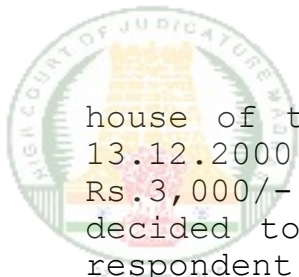


was employed under Muthuraman, the building owner. The appellant had registered two cases against the Muthuraman's family. In one case Raja Mohammed was an accused and he was also arrested. The learned counsel for the appellant would therefore contend that the appellant was falsely implicated as they wanted to take revenge on the appellant.

12.It is not in dispute that PW.7 had deposed that on 13.12.2000 at about 7.00 a.m. when he was on his morning walk and was passing by the police quarters, the appellant who was standing out side his house called him and enquired PW.7 as to whether he heard about the fire accident. When PW.7 answered in the affirmative, the appellant is said to have stated that certain disturbing reports have been appearing in the media and that therefore he may have to include Muthuraman also in the list of the accused. When PW.7 requested the accused not to do so, the accused is said to have demanded Rs.5,000/- The appellant is said to have told PW.7 to come to his house in the evening with the amount. PW.7 informed his employer Muthuraman and in the afternoon at about 2.30 p.m., PW.2 Asokan and PW.7 went to the house of the accused. PW.2 is said to have told the accused that his father refused to give Rs.5,000/- as it was on the higher side. There upon the accused is said to have reduced the demand to Rs.3,000/- and asked them to come around 8.00 p.m., He also gave his mobile phone number.

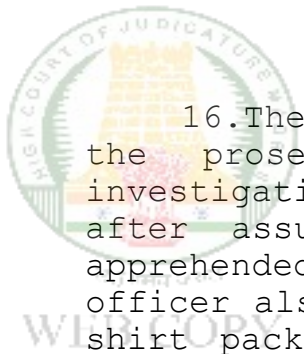
13.The learned counsel for the appellant would point out that the house of PW.7 was located at the distance of 1 ½ kilo meters from the police quarters and therefore his claim that he used to go on a morning walk near the police quarters cannot be believed. He also contended that PW.7 had come out with a false version by claiming that he was called by the accused and spoken to. He further claimed that the accused used to pass by MR Complex and that is how accused knew PW.7. The learned counsel pointed out that PW.7 was arrested by the accused and therefore this false explanation given by PW.7 should put this Court on guard while appreciating his testimony.

14.I am not persuaded by the aforesaid contention made by the learned counsel for the appellant. As rightly pointed out by the learned Government Advocate even if this Court eschews the testimony of PW.7, still the demand for illegal gratification stands established by the evidence of PW.2 Asokan. The specific case of the prosecution is that the demand for bribe was made on two occasions one in the morning on 13.12.2000 and again in the afternoon on the same date. Now the question is whether the evidence of PW.2 is believable. PW.2 has stated that his family is owning MR Complex. On 12.12.2000 at around 10.45 p.m. there was a fire accident in the medical shop. The accident had taken place due to electrical leakage. PW.2 deposed that the accused demanded payment of illegal gratification of Rs.5,000/- <https://hcservices.courts.gov.in/hcservices/> over Raja Mohammed. PW.2 stated that he went to the



house of the accused along with Raja Mohammed in the afternoon on 13.12.2000. PW.2 deposed that the accused reduced the demand to Rs.3,000/-. Since his father did not want to pay any bribe, they decided to lodge a complaint. PW.2 went to the office of the respondent and gave a complaint to the DSP. Based on the same, FIR was registered. PW.2's complaint was marked as Ex.P2. At around 2.45 p.m., shadow witnesses were introduced to PW.2. One was Thiagarajan, who was working as Assistant in District TB Centre. The other one was Durai Pandi who was working as Assistant in Education Department. PW.2 placed a sum of Rs.3,000/- brought by him. It was in denomination of 3 five hundred notes and 15 hundred rupee notes. Durai Pandi counted the same and the currency numbers were noted down in a paper. Sodium Carbonate solution was also prepared and phenolphthalein powder was applied on the currency notes. Entrustment Mahazar (Ex.P3) was also prepared. As per the prearranged plan, at around 4.15 p.m. the trap party left the office of the respondent. They reached Karaikudi at around 5.15 p.m. At around 5.45 p.m, Thiagarajan and PW.2 went to the house of the accused by two wheeler. When they reached the house of the accused they were informed that the accused had left for the police station 10 minutes earlier. Thiagarajan and PW.2 thereupon returned to MR Complex after informing the DSP. From their office PW.2 contacted the accused on his mobile phone. According to PW.2, the accused after ascertaining his location came to MR Complex in a two wheeler. The accused is said to have received the bribe amount of Rs.3,000/- in the first floor in the presence of the shadow witness Thiagarajan. The accused assured .that he would not include Muthuraman in the case. Thereafter, they came down and PW.2 gave the prearranged signal to the DSP. The accused sat on his two wheeler and was about start it.

15.PW.2 was extensively cross examined PW.2 admitted that the accused had registered Crime No.305 of 1999 against his brother Ramasamy and others. The said case was registered based on the complaint of one tenant by name Ravi. Crime No.424 of 2000 was also registered against PW.2 and the lodge Manager Balamurugan for offence under Section 380 of IPC. It was suggested that therefore PW.2 had a motive to implicate the accused. It was also suggested that the fire accident case was closed on the same date of occurrence. It was also suggested that when the accused was coming out of the station, PW.2 had accosted him and wanted a copy of the FIR for the purpose of making insurance claim. Even at that time, PW.2 is said to have thrust the currency notes into the packet of the accused. Shocked by the same, the accused is said to have thrown out the contents from his pocket. According to the accused, he never visited MR Complex on the evening of 14.12.2000. According to him, the entire occurrence took place outside the police station in the manner stated by him. This was the stand taken by the accused during examination under Section 313 of Cr.Pc also.



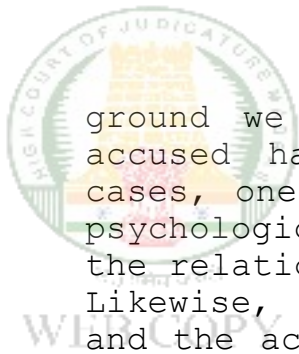
16.The learned counsel for the appellant also pointed out that the prosecution version is inherently improbable. The investigation officer would claim that when confronted, the accused after assuring to cooperate made an attempt to run. He was apprehended at the distance about 50 feet. The investigation officer also deposed that the accused had flung the contents of the shirt packet and scattered them on the road. If that had really happened, it would have been witnessed by several persons. But not even a single independent witness was examined. Therefore, according to the appellant's counsel, the version of the prosecution has to be rejected as utterly improbable.

17.I am unable to agree with the aforesaid contentions made by the appellant counsel. This is because the complaint as well as the entrustment mahazar reached the jurisdictional Court on the same day before the accused was trapped. This lends credence to the version projected by the prosecution.

18.Ragupathy, who was a tenant and whose shop witnessed the fire accident was examined as PW.8. He deposed that there was no damage to the building. Only the Pharmaceutical goods had been damaged. But the bank from which he had availed the loan had insured the goods. Ragupathy did not independently insure anything. Therefore, it is improbable that PW.2 could have approached the accused for copy of the FIR by claiming that he needs to make an insurance claim. PW.8 had deposed that as the result of the accident, the window panes had suffered damage and except that the building did not suffer any other damage. It is not the case of the accused that the building was insured by Muthuraman.

19.Durai Pandi is the shadow witness. He has no grudge against the accused. His testimony corroborates the deposition of PW.2 Asokan and PW.11 investigation officer. PW.3 could not be shaken in the cross examination at all. The prosecution is duty bound to establish both demand as well as acceptance of the bribe amount by the accused. The presumption under Section 20 of the Act will kick in only if the demand has been established by the prosecution. The prosecution has established that the accused had demanded illegal gratification by examining PW.7 Raja Mohammed and PW.2 Asokan. PW.3 Durai Pandi had deposed that when the accused was subjected to phenolphthalein test, it went against him. More than anything else Ex.P2-complaint, Ex.P7-FIR and Ex.P3-entrustment mahazar reached the jurisdictional Court well before the trap took place.

20.It has been clearly brought out in evidence that after the fire accident took place in the medical shop, the accused went to the spot and had taken over the investigation. It has been further established that the accused had not closed the investigation nor filed any final report. When the FIR was seized on 14.12.2000 it remained as it is. It is true that the accused had registered two



ground we cannot disbelieve the prosecution version. Since the accused had already prosecuted the complainant's family in two cases, one can also infer in favour of the prosecution. There is a psychological condition known as stockholm syndrome which refers to the relationship that develops between the hostage and the abductor. Likewise, there develops a kind of relationship between policemen and the accused. Since, PW.7 was already arrested by the accused, the accused felt emboldened to summon him when he was passing by and make the demand. In any event, PW.7 could not be shaken at all in the cross examination. If really, the complainant's family wanted to take vengeance on the accused, they did not have to wait till the fire accident took place. The fire accident had taken place in the night hours of 12.12.2000. The demand was made on 13.12.2000. On 14.12.2000 in the morning at about 10.30 a.m, PW.2 had gone to the office of the respondent to lodge the complaint. The sequence of events falsifies the defence of the accused. The Court below rightly concluded that the prosecution had established its case beyond any reasonable doubt. After reappreciating the evidence on record, this Court also comes to the very same conclusion.

21.However, taking into account, the present age of the accused and other mitigating aspects, sentence of 3 years Rigorous Imprisonment is reduced to 1 year Rigorous Imprisonment for both the charges. The sentences shall run concurrently. The period of incarceration undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. The conviction and fine imposed on the appellant is confirmed and the sentence of imprisonment is modified and reduced. The appeal is partly allowed. The learned Trial Judge shall enforce this judgment. The bail bond executed by the appellant if any shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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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 Special Judge for trial of cases under
the Prevention of Corruption Act, Sivagangai District.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai, Sivagangai District. (Crime No.08 of 2000)

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

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20864[F] dated
02/11/2020)

Judgment in
Crl.A(MD)No.435 of 2016

29.10.2020

SSS (CO)

NR (21/12/2020) 8P : 5C