



BAIL SLIP(in CRL A(MD).467 of 2016)

The Appellant/2nd Accused namely S.T.N.Manoharan, Male, Aged 59 years, S/o. S.T.Narayanasamy, was directed to be released on bail as per the order of this court dated 20.01.2017 in CRL MP(MD).12185 of 2016 in CRL A(MD).467 of 2016 on the file of this Court.

BAIL SLIP(in CRL A(MD).479 of 2016)

The Appellant/1st Accused namely S.M.Samenathan, Male, Aged 63 years, was directed to be released on bail as per the order of this court dated 20.12.2016 in CRL MP(MD).12515 of 2016 in CRL A(MD).479 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A(MD)Nos.467 and 479 of 2016

1.S.T.N.Manoharan	... Appellant/Accused No.2 in CrI.A(MD)No.467 of 2016
2.S.M.Samenathan	... Appellant/Accused No.1 in CrI.A(MD)No.479 of 2016

Vs

State Rep. by Inspector of Police,
Vigilance and Anti-Corruption,
Madurai Detachment,
Madurai.
(Crime No.13 of 2010)

... Respondent/Complainant
in both petitions

COMMON PRAYER: Criminal Appeals are filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed in Spl. Case. No.75 of 2011, dated 02.12.2016, on the file of the learned Special Court for Trial of Prevention of Corruption Act Cases, Madurai.

For Appellant
(in CrI.A. (MD)No.467 of 2016)

: Mr.K.Govindarajan
for Mr.S.Ravi



For Appellant
(in Crl.A. (MD)No.479 of 2016)

: Mr.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

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For Respondent
(in both appeals)

: Mr.A.Robinson
Government Advocate (Crl.side)

COMMON JUDGMENT

These appeals are directed against the Judgment, dated 02.12.2016 made in Special Case No.75 of 2011 on the file of the Special Court for Trial of Prevention of Corruption Act cases, Madurai.

2.By the impugned Judgment, the first accused/Samenathan was found guilty of the offences under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo two years rigorous imprisonment for each of the offences and also levied with fine of Rs.10,000/- and defaulted sentence was also imposed. The second accused was found guilty of the offences under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-.

3.The case of the prosecution is as follows:

The de-facto complainant-Shanmuganathan/P.W.2 lost his Two-wheeler Hero Honda on 22.10.2009. In this regard Crime No.1100 of 2009 was registered on the file of the Jaihindpuram Police Station (Crime) and in order to claim the insurance amount, he approached the first accused/Samenathan, who was the then Inspector of Police (Crime). On 07.05.2010 at around 06.45 p.m, the de-facto complainant requested A1 to issue him a Non-Traceable Certificate. A-1 was said to have demanded a sum of Rs.2000/- as illegal gratification for issuing the RCS Notice. Based on the request of the de-facto complainant, it was reduced to Rs.1,500/-. On 08.05.2010, A-1 called the de-facto complainant through his mobile phone and insisted that he should pay the bribe amount. Again on 12.05.2010, when P.W.2 contacted A-1 for issuance of RCS Notice, the first accused reiterated his demand. Since P.W.2 was not willing to pay the bribe amount, he approached the respondent and lodged Ex.P.21 complaint. Based on the same, the respondent registered Crime No.13 of 2010 (Ex.P.20) for the offences under Section 7 of the Prevention of Corruption Act 1988. P.W.9 was the Inspector of Police, who registered the First Information Report and he also arranged the shadow witnesses, namely, Thiru.Sivakumar and Thiru.Hariharasubramaniam. The usual pre-trap formalities were concluded and the de-facto complainant was asked at around 07.30



p.m., on 12.05.2010. The trap laying party left the place and reached near Jaihindpuram Police Station at around 08.00 p.m. P.W.2-Shanmuganathan and P.W.3-Sivakumar entered the Jaihindpuram Police Station and met A-1/Samenathan. When A-1 called upon one Somasundaram, Head Constable(P.W.6) to complete the necessary formalities for issuance of the Non-Traceable Certificate, the said Head Constable refused to do so. Thereafter, the first accused is said to have instructed the second accused/S.T.N.Manoharan to carry out the necessary formalities. After completing the necessary formalities S.T.N.Manoharan(A-2) is said to have issued RCS Notice to P.W.2(Shanmuganathan). At that stage, A1 reminded P.W.2 about his earlier demand and thereupon, P.W.2 attempted to give the tainted money to A-1. A-1 instructed A-2(S.T.N.Manoharan) to receive the same. A-2(S.T.N.Manoharan) received the tainted money from P.W.2 and kept it in his left side pant pocket. Thereafter, P.W.2 and P.W.3 came out of the station and gave the prearranged signal. Immediately, the Trap Laying Officer, P.W.9 came and after confirming from P.W.2 that the tainted money had been received, he seized the same from A-2. A-2 was subjected to phenolphthalein test. It proved positive. Thereafter, all the usual formalities were carried out. P.W.14-Thiru.Ramesh took over the investigation from P.W.9 and after examining other witnesses and after getting Ex.P.1-Sanction Order. Cognizances of the offences under Sections 7, 13(1) (d) r/w 13(2) was taken. Summons were issued to the appellants, who entered appearance and received copies. Charges were framed as mentioned above.

4.The accused denied the charges and claimed to be tried. The prosecution, to establish his case, examined P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P.30 and also marked M.O.1 to M.O.5. On the side of the accused, no evidence was adduced. The incriminating circumstances were put to the accused during the examination under Section 313 of Cr.P.C. They characterised the same as false.

5.The learned Trial Judge, after a detailed consideration of the evidence on record, convicted and sentenced the appellants as mentioned above.

6.Heard Mr.Ajmalkhan, learned Senior counsel appearing for A-1, Mr.Govindarajan, learned counsel appearing for A-2 and Mr.A.Robinson, learned Government Advocate (Crl. side) appearing for the respondent police.

7.It is seen that the de-facto complainant, Thiru.Shanmuganathan, who was examined as P.W.2, turned hostile. He deposed before the Court below that he is working as a Tailor and that he lost his Two-wheeler on 22.10.2009 and that, he lodged a theft complaint in that regard. The complainant wanted a Non-Traceable Certificate for processing his insurance claim. When he approached A-1 in this regard, he has stated that it would take ten



more days. P.W.2 deposed before the Court below that since A-1 delayed the issuance of the Non-Traceable Certificate, he got angry and lodged Ex.P.21 complaint. He went to the office of the respondent and made a complaint that A-1 was delaying the issuance of the certificate. P.W.2 would blame P.W.9(Jayakumar). P.W.2's stand was that the lodging of the complaint, registration of the case and the trap operation was entirely engineered by P.W.9. P.W.2 also stated that A-2 issued the Non-Traceable Certificate based on the instruction of A-1. P.W.2 did not depose that there was any demand for payment of illegal gratification at the time of trap operation. He instead would claim that he left the amount on the table. He was rightly declared hostile by the prosecution. But in the cross-examination, nothing useful could be elicited.

8.Per contra, the learned Government Advocate (Crl. side) would submit that the impugned Judgment can be sustained based on the testimony of the shadow witness/P.W.3. The learned Government Advocate (Crl. side) submitted that the receipt of the bribe amount by A-2 would amount to constructive receipt by A-1. He also wanted me to closely scrutinise the stand taken by A-2 during trial. Morethan anything else, P.W.3, who is a Government servant, has no axe to grind against the accused persons. Therefore, this Court can safely sustain the impugned Judgment of conviction and sentence based on the testimony of P.W.3.

9.The learned counsel appearing for the second accused would point out that in Ex.P.21-Complaint, it is seen that the first accused has been named and the second accused has not been referred to. The second accused is said to have joined duty only on the occurrence date. He never made any demand. As a Special Sub-Inspector of Police, who was promoted from the constabulary, he has to necessarily comply with the instructions from the superior. The superior had asked him to make ready the Non-Traceable Certificate. He was faithfully doing it. Even going by the prosecution, only on the instructions of A-1, A-2 received the amount. Therefore, the learned counsel would state that A-2's case stands on a different footing altogether.

10.Though the said submission advanced by the learned Government Advocate (Crl. side) has shaken me to a limited extent, I am afraid that my hands are tied. In an almost identical situation, vide order dated 11.05.2020 in Crl.A.(MD)Nos.269 & 272 of 2014, I had held as follows:-

"...15. Answer to the issues:-

.....As rightly contended by the learned senior counsel appearing for the appellants, the prosecution is duty bound to prove the charges under Sections 7, 13(2) r/w. 13(1) (d) of Prevention of Corruption Act beyond reasonable doubt and that there must be a proper proof of demand and acceptance of illegal gratification. Mere recovery by itself



would not prove the charge. The proof of demand is an indispensable essentiality. Section 20 of Prevention of Corruption Act frames requirements of presumption only to the offence under Section 7 of the Act. Even then, such proof of acceptance of illegal gratification could follow only if there was proof of demand. In the absence of proof of demand, the legal presumption under Section 20 of the Act would not arise.

16. The Hon'ble Supreme Court in the decision reported in (2015) 10 SCC 152 (P.Satyanarayana Murthy V. State of A.P.) held as follows:-

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

17. Of course the learned Additional Public Prosecutor put up a valiant rear-guard action by relying on the decisions reported in AIR 1960 SC 548 (C.I.Emdan V. State of U.P.), AIR 1964 SC 575 (Dhanvantrai V. State of Maharashtra) and (2001) 1 SCC 691 (M.Narsinga Rao V. State of A.P.).

18. No doubt the decisions relied on by the learned Additional Public Prosecutor are to the effect that once the acceptance of the amount by the accused is established, the legal presumption under Section 20 of the Act will be triggered. But my hands are rather tied. It cannot be denied that the decision rendered in "Satyanarayana murthy" is heavily in favour of the appellants herein. The correctness of the said reasoning was of course contested before the two-Judge Bench of the Hon'ble Supreme Court in Neeraj Dutta V. State (Govt. of N.C.T. Of Delhi). The matter was then placed before a Three-Judge Bench of the Hon'ble Supreme Court in. Vide order dated 27.08.2019 in Crl.Appeal No.1669 of 2009 a reference was made in the following terms:-

"3. Noting the divergence in the treatment of the evidentiary requirement for proving the offence under Sections 7 and 13(1)(d) read with Section 13(2), Prevention of Corruption Act, 1988, the Court referred the following question of a law for determination by a larger bench:

'The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential



deduction of culpability/guilt of a public servant under Section 7 and Section 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution.'

4. Heard learned senior counsels for the parties at length.

5. We note that two three-judge benches of this Court, in the cases of B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55; and P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Another, (2015) 10 SCC 152, are in conflict with an earlier three-judge bench decision of this Court in M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691, regarding the nature and quality of proof necessary to sustain a conviction for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence of the complainant is unavailable.

19. The Hon'ble three-Judge Bench directed the Registry to place the papers before the Hon'ble Chief Justice for constituting the Larger Bench. Till date, the Larger Bench has not been constituted for answering the reference.

20. Now the question that arises for consideration is that what am I supposed to. If the Hon'ble three-Judge Bench in Neeraj Dutta has taken a contrary view, this Court may probably go through all the decisions and follow that which appears to be more reflective of the correct legal position. But in this case, the latest three-Judge Bench felt it necessary to request the Hon'ble Chief Justice to constitute a Larger Bench. The Hon'ble three-Judge Bench in Neeraj Dutta only doubted the reasoning in "Satyanarayanamurthy".

21. P.W.2 is the defacto complainant in this case. It was his auto that was seized and detained. His complaint is that to release the same, the accused demanded a sum of Rs.800/- as bribe amount. But when P.W.2 stood in the witness box, he turned hostile. He did a somersault that will make any acrobat performing in a circus proud. He withstood the aggressive cross examination of the Public Prosecutor and was not shaken at all. He even went to the extent of disowning a substantial part of the complaint. He accused the Vigilance and Anti Corruption police of having prepared the complaint of their liking and making him to sign on the dotted lines. He alone could have spoken about the demand or bribe by the accused. The testimony of P.W.2 does not in any way implicate accused Nos.1 and 2. Of course the shadow witness P.W.4 Athimoolam had testified that accused No.2 repeated the demand at the time of trap. The prosecution also would claim that after accused No.2 received a sum of Rs.800/-, he went to the room of accused No.1 to give a sum of Rs.500/- to him. But when the star witness has stabbed the prosecution in the back, the cameo performance by P.W.4 shadow witness will not



resurrect the prosecution case.

22.Applying the ratio laid down in "Satyanarayanamurthy", I must necessarily hold that the prosecution has miserably failed to prove the demand in this case. Therefore, the impugned Judgment of the Court below must be necessarily set aside. It is accordingly set aside..."

11.The case of the appellants is identical. Therefore, I will have to adopt the very same approach to the case on hand also. The prosecution is obliged to prove its case beyond reasonable doubt. Because of the somersault done by its star witness, the prosecution case has been shattered. Demand has not been established. In view of the testimony of P.W.2, serious doubt has arisen in the mind of this Court. A2-Manoharan, never had any prior dealing with the de-facto complainant. He was merely acting on the basis of instructions given by the superior. He had joined duty just on the day of occurrence. He appear to be a victim of circumstances. In view of the pending reference before the Hon'ble Supreme Court of India and taking note of the discussion already set out, I have no other option, but to set aside the impugned judgment. The impugned judgment is set aside. The appeals are allowed. The appellants are acquitted. The fine amounts, if any, paid by them, shall be refunded forthwith. The bail bonds, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

To

1.The Special Court for Trial of Prevention
of Corruption Act Cases, Madurai.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Madurai Detachment, Madurai.

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

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



CrI.A.(MD)Nos.467 and 479 of 2016

+2 CC to Mr.S.RAVI, Advocate SR.No.27003

+1 CC to Mr.AJMAL ASSOCIATES, Advocate SR.No. 26741

CrI.A(MD)Nos.467 and 479 of 2016
21.12.2020

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NA (CO)

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