Bail Slip
CRL.A.(MD).No.471 of 2016

S.Chidambaram Pillai, (Sole Accused), S/o.Subramania Pillai, was released on bail vide Court order dated 22.03.2017, made in Crl.MP (MD)No.12276 of 2016 in Crl.A(MD)No.471 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD).No.471 of 2016

S.Chidambaram Pillai ... Appellant/Accused(Single)

Vs.

The State rep. by,
The Additional Superintendent of Police,
Vigilance and Anti-Corruption Detachment,
Thoothukudi.
(Crime No.5 of 2006) ... Respondent/Complainant

PRAYER : Criminal appeal is filed under Sections 374 of Cr.P.C., to call for the entire records pertaining to the Judgment rendered by the Special Court for trial of Cases under the Prevention of Corruption Act, Tirunelveli, Tirunelveli District in Special Case No.32 of 2014 vide his Judgment dated 17.11.2016 and set aside the same and consequently acquit the appellant honorably from the charges referred to in the said case.

For Appellant : Mr.R.Shanmuga Sundaram,
Senior Counsel,
for Mr.R.Anand.

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

JUDGMENT

This criminal appeal is directed against the Judgment dated 17.11.2016 made in Special Case No.32 of 2014 on the file of the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tirunelveli.

2. By the impugned Judgment, the appellant had been found guilty for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo three years Rigorous Imprisonment and also levied with fine.

3. The case of the prosecution is as follows:-

The appellant/accused Thiru.S.Chidambaram Pillai was functioning as Assistant Commissioner(Accounts) in Tirunelveli Municipal Corporation from February 2006 to August 2006. One Kanthimathinathan was employed as Zonal Officer in the said Corporation. Disciplinary action had been taken against him and it was the subject matter of more than one writ petition before the High Court. Compulsory retirement was the punishment finally imposed on Kanthimathinathan. However, there were certain outstanding issues and his retirement benefits had not been settled. In this regard, Kanthimathinathan approached Chidambaram Pillai on 23.08.2006 at about 9.30 a.m. and the appellant had demanded Rs.5,000/- as illegal gratification. He scaled down his demand and agreed to accept Rs.3,000/- from him. Kanthimathinathan/P.W.2 approached the respondent and lodged written complaint on 23.08.2006 at about 11.30 a.m.(Ex.P.2). It was registered as Crime No.5 of 2006 under Section 7 of the Prevention of Corruption Act, 1988(Ex.P.3). Thereafter, P.W.4 arranged two shadow witnesses and completed all the pre-trap formalities. Ex.P.4 Entrustment Mahazar was prepared. The trap laying party thereafter went to the office of the Tirunelveli Municipal Corporation. P.W.2/Kanthimathinathan and the shadow witness P.W.3 who had been sent from T.N.E.B. went to meet the accused at around 5.50 p.m. on the same day. The accused reiterated his demand and wanted to know if P.W.2 had brought the amount. P.W.2 handed over the tainted money of Rs.3,000/- to the accused. The accused received the same by his right hand and then with his left hand, put the money in the table drawer. P.W.2 and P.W.3 came out and gave the pre-arranged signal. Thereupon, the trap laying party entered and after confirming with P.W.2 that the accused had received the money and upon being identified by P.W.2, the accused was subjected to Phenolphthalein test. It was conducted in both the hands and they turned positive. The tainted money was also seized intact. Thereafter, Ex.P.9 Mahazar was prepared in the presence of witnesses. P.W.12 took over the investigation from P.W.4 and after examining the other witnesses and obtaining Sanction Order Ex.P.1, filed final report. Cognizance of the offence was taken and summon was issued to the accused. Copies were served to the accused under Section 207 of Cr.P.C. and charges were framed. The accused denied the charges and claimed to be tried. The prosecution examined as many as twelve witnesses and marked Ex.P.1 to Ex.P.24 and M.O.1 to M.O.3. On the side of the accused, three witnesses were examined and Ex.D.1 to Ex.D.6 were marked. The learned trial Judge after a detailed consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, this appeal has been filed.

4. The learned Senior counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and in the notes of arguments and wanted this Court to set aside the impugned Judgment, acquit the appellant and allow this appeal.

5. Per contra, the learned Government Advocate(Crl.Side) submitted that the impugned Judgment does not warrant any interference and wanted this Court to dismiss the appeal as devoid of merits.

6. I carefully considered the rival contentions and went through the evidence on record.

7. The core argument of the learned Senior counsel is that the demand said to have been made on 23.08.2006 could not be believed and that the acceptance of Rs.3,000/- by the accused was towards Flag Day collections and not as bribe. He would point out that P.W.2 has a strong motive against the accused. The defacto complainant was originally suspended and then dismissed from service. Thereafter, the punishment was converted to one of compulsory retirement. But P.W.2 had reached the age of superannuation on 31.05.2001. The question was whether the compulsory retirement was to be imposed on P.W.2 with effect from the date of suspension (i.e.) on 31.12.1996 or from the date of superannuation (i.e.) on 31.05.2001. The difference of 4 ½ years obviously had considerable financial implications for P.W.2. When the file was put up before the accused, he had made an endorsement in Ex.P.10 that P.W.2 is entitled for pensionary benefits from 31.12.1996 only. According to the appellant, P.W.2 was getting information about the processing of his file from P.W.5 Subbulakshmi who was also a Corporation staff. This noting was made by the appellant on 17.08.2006 itself and again on 22.08.2006. Since the recommendation made by the accused officer was to the prejudice of P.W.2, P.W.2 decided to wreck vengeance on the appellant. In any event, since the appellant had already dealt with the file on 22.08.2006 and nothing was pending with him as on 23.08.2006, there was no possibility for the appellant to have demanded any illegal gratification from P.W.2. Therefore, the allegation that P.W.2 met the appellant on 23.08.2006 at the place where he was staying and that the appellant made a demand for payment for illegal gratification cannot be believed.

8. Mere recovery of the currency notes from the table drawer of the accused cannot by itself be decisive of the issue.

The municipal staff had been mandated to collect donations for Flag Day. By examining D.W.1 and D.W.2, the accused had established that the amount of Rs.3,000/- received by the accused was only towards Flag Day collection. Ex.D.1 was the congratulation letter issued by the Commissioner of Tirunelveli Municipal Corporation in favour of the accused. Ex.D.4, Ex.D.5 and Ex.D.6 are the counter foils of the receipts pertaining to the Flag Day collection. There is nothing on record to show that the amount of Rs.3,000/- was received by the accused with any dishonest intention. In fact after the trap, this was the explanation given by the accused that the same has been conveniently suppressed.

9. The learned Senior counsel would contend that paragraph No.47(1) of the Vigilance Manual has been breached. The learned Senior counsel also placed materials which according to him cast serious doubt on the bona fides of P.W.2. His statement cannot be taken at its face value.

10. I am not persuaded by the aforesaid submissions of the learned Senior counsel. In most of the trap cases, the accused would deny having received the money. They would allege that the currency notes on which Phenolphthalein powder was applied were thrust of them. In some cases, they would even claim that the trap laying officer coerced the accused officer to handle the currency notes. But fortunately for the prosecution, they have been relieved of the burden on that score. The accused admits that he received M.O.1 series [six Nos. of Five Hundred Rupee notes (Rs.3,000/)]. His only defence is that the said amount was received not as a bribe but towards Flag Day collection. This Court has to scrutinise, if this defence holds good. Of course the prosecution is also obliged to independently establish the factum of the demand for payment of illegal gratification.

11. It is true that P.W.2 was engaged in litigation with Tirunelveli Corporation for settling his retirement benefits. It is true that disciplinary action was initiated against P.W.2 and that he was also punished. But that cannot be a ground for disbelieving his allegation. The Court is obliged to scrutinise his statement with greater care and look for strong corroboration. While P.W.2 might have faced the disciplinary action, it must be noted that he has no personal motive against the accused/appellant. There is no evidence to show that P.W.2 was aware of the noting made by the accused on P.W.2's retirement file. P.W.2 might have received broad information about the status of his file. But it is unlikely that P.W.5 was providing him with a minute to minute running commentary. I find it difficult to believe that merely because the accused made a file noting that the date of suspension of P.W.2 should be the date of his

compulsory retirement, that led P.W.2 to lodge the instant complaint.

12. As rightly pointed out by the learned Government Advocate (Crl. Side), even if for the demand said to have been made on 23.08.2006 at 9.30 a.m., there is ample corroboration for the demand made in the evening by the accused. P.W.3 John Devasahayam Rajadurai was employed in TNEB. His service was requisitioned as a shadow witness. He has absolutely no motive against the accused. He accompanied P.W.2 at the time of trap. He deposed in unambiguous terms that when P.W.2 greeted the accused, the accused stated that he had already signed in the file and sent it to the section and he would expedite the disbursement of benefits and then asked P.W.2 as to whether he had brought the amount that was demanded by him. Only thereafter, P.W.2 answered in the affirmative and took out M.O.1 series currencies and gave it to the accused. P.W.2 also stated that the accused received the amount with his right hand and thereafter with his left hand, placed it in the left drawer. This testimony of P.W.2 is consistent with the record marked in the trial. Admittedly the file had already been processed by the accused and that was the crux of the statement made to P.W.2 at the time of trap. The Phenolphthalein test was conducted on both the hands of the accused and they turned positive. Thus these two aspects, namely, the factum of of the file already having been cleared by the accused and handling of the currency notes in both the hands are in consonance with the testimony of P.W.3. There is no reason to disbelieve the testimony of P.W.3 who has no axe to grind the accused. Therefore, I have to hold that the prosecution had established the charge under Section 7 of the Prevention of Corruption Act, 1988, beyond reasonable doubt.

13. The next question that has to be considered is as to whether the defence of the accused can be believed. The defence has to be rejected for more than one reason. If the amount had been received towards Flag Day collection, receipt should have been issued then and there. Though D.W.1 and D.W.2 had deposed in favour of the accused, the evidence of D.W.3 is a clear give away. He had stated that the accused was not having the receipt books. He also denied in the chief examination that the accused would call upon the subordinate officials to issue receipts for the donation received by the accused officer. The counter foils marked by the accused as Ex.D.4 to Ex.D.6 shows that each receipt was for Rs.100/-. A sum of Rs.3,000/- is fairly a large amount. I find it difficult to believe that such a large amount would have been voluntarily contributed and that too towards Flag Day collection by P.W.2 who was fighting his case for more than ten years. If the defence of the accused is accepted, then any officer who was caught red handed would escape by explaining that the

money received by him was towards Flag Day collection. It is not the case of the accused that he was having receipt books or that he issued receipt to P.W.2. In fact the accused was not even having the Flag Day ticket books with him. Therefore, the defence version has to be rejected as a tissue of lies. As regards the contention that the statement obtained from the accused was suppressed and that there was violation of paragraph No.47 of Vigilance Manual, I need only to cite the decision of the Madras High Court reported in 2013 SCC Online Mad 30 (Duraimurugan V. State) in which it was held that the guidelines in the Vigilance Manual are administrative in nature and are only directory and not mandatory. In any event, any defect in the investigation however serious will not vitiate the conviction unless prejudice is shown.

14. There is also no merit in the contention of the learned Senior counsel that the accused was not the competent authority to sanction the benefits and that therefore, the allegation that he demanded illegal gratification cannot be believed. The decision of the Hon'ble Supreme Court reported in AIR 1955 SC 70 (Mahesh Prasad V. State of Uttar Pradesh) furnishes a complete answer. In paragraph No.3, it was held as follows:-

> "3. It is pointed out that the appellant though employed in the Railway was not himself a person who was in a position to give a job to the complainant nor is it shown that he had any intimacy or influence with any particular official who could give a job. It is urged therefore that the offence, if any, committed by the appellant could only be one of cheating and not the receiving of a bribe. This argument is without any substance. By the terms of Section 161 of the Indian Penal Code a person who is a public servant and accepts illegal gratification as a motive for rendering service, with any public servant as such, is guilty of the offence thereunder.
>
> To constitute an offence under this section it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is even aware of it. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. Nonetheless he is guilty of the offence under Section 161 of the Indian Penal Code. This is clear from the fourth

Explanation to Section 161, Indian Penal Code, which is as follows:

> 'A motive or reward for doing'. A person who receives a gratification as a motive for doing what he does not intend to do, (or as a reward for doing what he has not done) comes within these words.'
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> Illustration (c) to Section 161 of the Indian Penal Code which runs as follows also elucidates this:
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> 'A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for, this service. A has committed the offence defined in this section. '

Thus where a public servant who receives illegal gratification as a motive for doing or procuring an official act whether or not he is capable of doing it or whether or not he intends to do it he is quite clearly within the ambit of Section 161 of the Indian Penal Code."

15.The Court below had considered all the contentions of the accused and given a finding that the accused is guilty of the offences with which he has been charged. After a careful re-appreciation of the entire evidence on record, I concur with the findings of the Court below. The conviction imposed on the appellant is confirmed. However taking note of the mitigating circumstances obtaining in favour of the accused/appellant, the sentence of imprisonment is reduced from three years Rigorous Imprisonment to one year Simple Imprisonment in respect of both the charges. The sentences will run concurrently.

16. With this modification in the matter of sentence, this criminal appeal is partly allowed. The trial Court is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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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,
   Tirunelveli, Tirunelveli District.

2. The Principal District Judge,
   Tirunelveli.

3. The Additional Superintendent of Police,
   Vigilance and Anti-Corruption Detachment,
   Thoothukudi.

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

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

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