BAIL SLIP

The Appellant/Accused R.Rajendran, was released on bail as per the order of this Court dated 24.02.2016 made in CRL MP(MD)No.1723 of 2016 in CRL A(MD)No.61 of 2016.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 11.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl A (MD) No.61 & 138 of 2016

Crl A(MD)No.61 of 2016 :

R.Rajendran ... Appellant in Crl A(MD)No.61 of 2016 / Accused

Vs.

The State,
rep.by the Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Nagercoil,

(Crime No.10 of 2007 registered at
Vigilance and Anti Corruption Detachment,
Tirunelveli) ... Respondent / Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.Pc, to call for the records pertaining to the judgment delivered by the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli in Special Case No.42 of 2014 vide judgment dated 19.02.2016 and set aside the same and consequently acquit the appellant honorably from all the charges mentioned in the above said case.

Crl A(MD)No.138 of 2016 :

Rajagopal ... Appellant in Crl A(MD)No.138 of 2016 / Defacto complainant

Vs.

1.The State,
rep.by the Deputy Superintendent of Police,
Vigilance and Anti Corruption, Nagercoil,
(Crime No.10 of 2007 registered at
Vigilance and Anti Corruption Detachment,
Tirunelveli) ...1st Respondent / Complainant

2.R.Rajendran ...2nd Respondent / Sole Accused

Prayer : This Criminal Appeal is filed under Section 372 of Cr.Pc, to call for the records relating to the judgment dated 19.02.2016 made in Special Case No.42 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli and enhance the sentence awarded to the second respondent/sole accused.

Appearance in Crl A(MD)No.61 of 2016 :

For Appellant : Mr.R.Shanmugasundaram, Senior counsel for Mr.S.Ravi

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

Appearance in Crl A(MD)No.138 of 2016 :

For Appellant : Mr.R.Gandhi

For Respondent No.1 : Mr.A.Robinson, Government Advocate (crl.side)

For Respondent No.2 : Mr.R.Shanmugasundaram, Senior counsel for Mr.S.Ravi

COMMON JUDGMENT

Both these criminal appeals were directed against the judgment dated 19.02.2016 made in S.C No.42 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli By the impugned judgment, Thiru.Rajendiran has been convicted and sentenced as follows :

Offence	Punishment
Under Section 7 of the Prevention of Corruption Act, 1988	Three years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo Five months simple imprisonment.
Under Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988	Three years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo Five months simple imprisonment.

2.The accused Rajendran had preferred Criminal Appeal No.61 of 2016 while the defacto complainant/PW.2 Rajagopal filed Criminal

Appeal No.138 of 2016 seeking enhancement of sentence. It may be noted at the very outset that the Hon'ble Supreme Court in the decision reported in ***(2020) SCC Online SC 685 (Parvinder Kansal vs. State of NCT of Delhi and Another)*** held that no appeal seeking enhancement of sentence at the instance of the victim is maintainable. Respectfully following the judgment of the Hon'ble Supreme Court, I dismiss Crl.A No.138 of 2016 as not maintainable. However, in the interest of justice, the learned counsel for the defacto complainant was heard independently.

3.The case of the prosecution is as under :

The appellant Rajendran was working as Inspector of Police, City Crime Branch, Tirunelveli City during the relevant time. The defacto complainant Rajagopal was running a Fruit Shop at Tirunelveli Junction. PW.7 Santha is the wife of PW.2. PW.2's bank account was utilized by his in-laws for transfer of funds from USA to his father in law Sidamani. While PW.2 would claim that he had faithfully passed on the remittances, his in-laws made an allegation that PW.2 retained a portion of them. In this regard, a complaint was preferred against PW.2 and his wife PW.7 A criminal case was also registered in Crime No.17 of 2007 against PW.2 and PW.7 on the file of the City Crime Branch, Tirunelveli. While so, on 12.05.2007 at about 10.30 P.M, the accused visited the shop of PW.2 and informed him about the registration of the criminal case and demanded a sum of Rs.20,000/- for closing the same. He threatened that if the amount was not paid, he would have them arrested and remanded. PW.2 sought time for paying a sum of Rs.10,000/-. The accused left the place by insisting on payment of Rs.20,000/-. PW.2 and PW.7 remained away from Tirunelveli and after obtaining anticipatory bail on 31.05.2007 returned. On 01.06.2007 at about 06.15 P.M, the accused contacted PW.2 on his mobile phone and repeated the demand. Since PW.2 was not interested to comply with the demand, he filed a complaint before the respondent on 02.06.2007 at about 10.30 A.M. Based on Ex.P2 complaint, the respondent registered Ex.P15 FIR as Crime No.10 of 2007 for the offence under Section 7 of the Prevention of Corruption Act, 1988.

4.The trap laying officer PW.11 (L.Raju) arranged two official witnesses namely, Muthuraman, Junior Engineer, Tamil Nadu Electricity Board and one Nagarajan, Superintendent, Tamil Nadu Civil Supplies Corporation. The pre-trap formalities were concluded. Ex.P4 entrustment mahazar was prepared at 01.30 P.M on 02.06.2007. Thereafter, PW.2 called the accused and asked him as to where he has to come to pay the amount. The accused informed PW.2 to come to the office of PW.6 - Mohammed Hussain at about 04.00 P.M. The complaint, FIR as well as the entrustment mahazar were despatched to the jurisdictional court at 03.30 P.M. The trap laying officer PW.11, the defacto complainant PW.2 and the shadow witness PW.3 left the place and reached the spot near 03.45 P.M. PW.2 and PW.3 went to the office of PW.6 and returned as the accused had not arrived by then. At about 04.10 P.M, the accused arrived in a Scooter and the accused asked PW.2 as to whether he has brought the amount. PW.2 answered in the affirmative and took the tainted money from his shirt pocket and handed it over to the accused. The accused received the money in his hands, counted it and placed it on the rear right side of his pant pocket. PW.2 came out and gave the pre-arranged signal. Thereupon, PW.11 along with the other shadow witness came inside the office of PW.6 and enquired PW.2 and PW.3. PW.2 narrated what happened and also identified the accused. At this stage, PW.6 Mohammed Hussain got agitated and was against the trap formalities taking place in his office. PW.11 pacified him and subjected the accused to phenolphthalein test. The accused dipped his hands into the sodium carbonate solution and they turned pink. They were collected in MO.4 and MO.5 bottles and sealed. When PW.11 questioned the accused about the tainted money, the accused produced the same in his pant pocket. The accused was made to change his dress and pant of the accused was also subjected to phenolphthalein test. It also turned pink. That solution was also collected and sealed in MO.6 bottle. Before further formalities could take place, PW.6 objected. That is why, the trap laying party had to leave the office of PW.6 along with the accused. They reached Medai Police Station where the City Crime Branch is also located. The Case Diary pertaining to Crime No.17 of 2007 registered against PW.2 and PW.7 was produced by the accused to PW.11. Thereafter, PW.11 informed the Additional Superintendent of Police Thiru.Maluk Mudali about the occurrence and also prepared Ex.P7 recovery mahazar. Thiru.Maluk Mudali came around 07.40 P.M and arrested the accused. Thereafter, PW.11 handed over the investigation to PW.12 Sundarrajan.

5.PW.12 took over the investigation from 04.06.2007. He examined the other witnesses and after obtaining sanction order Ex.P1, filed the final report against the accused for the offences punishable under Sections 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988. Summons were issued to the accused. Charges were framed for the aforesaid offences. The accused denied the charges and claimed to be tried. In order to establish its case, the prosecution examined PW.1 to PW.12 and marked Exs.P1 to P26. MO.1 to MO.6 were also marked. Incriminating circumstances appearing against the accused were put to him during the examination under Section 313 Cr.PC. The accused denied the same as false and came out with his defence version. He also examined four witnesses on his side and marked exhibits. The learned trial judge after consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, Criminal Appeal (MD)No.61 of 2016 came to be filed.

6.Heard the learned Senior Counsel appearing for the accused, the learned Government Advocate (crl.side) for the prosecution and the learned counsel for the defacto complainant.

7.The learned Senior Counsel reiterated all the contentions set out in the memorandum of grounds and also in the written submissions settled by him and wanted this Court to set aside the impugned judgment, acquit the accused and allow this appeal.

8.Per contra, the learned Government Advocate (crl.side) for the prosecution as well as the learned counsel for the defacto complainant contended that the impugned judgment does not call for any interference. In fact, the learned counsel for the defacto complainant submitted that there is scope for enhancement of the sentence even in the appeal filed by the accused. They would point out that the FIR and the entrustment mahazar reached the jurisdictional court even before the the trap was laid. The demand made by the accused has been established through the evidence of PW.2 and PW.7. The first demand made on 12.05.2007 has been proved through the evidence of PW.2 and PW.7. The second demand made to PW.2 on 01.06.2007 has been corroborated by the attendant circumstances. Omission on the part of the investigation will not be a ground for acquittal as the Hon'ble Supreme Court in the decision reported in ***(2013) 10 SCC 192 (Hema vs. State, through the Inspector of Police)*** had noted that the defect in the investigation cannot lead to acquittal. The omission to mention the presence of PW.7 in the FIR is not fatal to the prosecution, because, FIR is not an encyclopedia and it is not necessary that all the events should be narrated therein.

9.The learned Government Counsel would point out that this is a well settled proposition and referred to the decision of the Hon'ble Supreme Court reported in ***(1982) 3 SCC 466 (Kisan Chand Mangal vs. State of Rajasthan).*** It is true that PW.6 turned hostile. But that would not by itself weaken the case of the prosecution. This is because, the shadow witness PW.3 who is a government official has no animosity against the accused. He categorically deposed that the accused officer accepted the bribe amount from PW.2 in the office of PW.6. It is true that there was some strained relationship between PW.11 and the accused. But, it is inconceivable that in view of the same, the trap laying officer would come to the extent of foisting a false case. It is also true that the signature of the accused was not obtained in the seizure mahazar and in the labels affixed on MO.4, MO.5 and MO.6 bottles. But the investigation officer is not obliged to do so. As regards breach of the mandate set out in the Vigilance Manual, the learned Government counsel pointed out that the provisions of the Vigilance Manual are only directory and not mandatory. Since the prosecution had proved the demand and also acceptance of the bribe amount by the accused, this

Court can safely presume against the accused. Since the accused has not successfully rebutted the presumption, this Court ought to confirm the impugned judgment and dismiss the appeal.

10.I carefully considered the rival contentions and went through the entire evidence on record. PW.1 was the sanctioning authority and through him Ex.P1 the sanction order was marked. The learned Senior Counsel for the accused did not seriously challenge the validity of the sanction order. PW.2 Rajagopal is the defacto complainant and through him Ex.P2 complaint, Ex.P4 entrustment mahazar, Ex.P5 mahazar and other documents were marked. PW.3 Muthuraman, Junior Engineer in Tamil Nadu Electricity Board was the shadow witness who accompanied PW.2 and through him Ex.P6 Case Diary in Crime No.17 of 2007, Ex.P7 Recovery Mahazar and Ex.P8 Search List were marked. PW.6 Mohammed Hussain did not support the prosecution case. PW.7 Santha is the wife of PW.2 and she was examined to corroborate P.W/2's testimony that the accused demanded payment of illegal gratification on 12.05.2007. PW.11 Thiru.L.Raju was the Inspector of Police, Vigilance and Anti Corruption and he was the one who registered Ex.P5 FIR and laid the trap. PW.12 Sundarrajan, the Deputy Superintendent of Police took up the investigation after the trap and filed the final report against the accused.

11.It is well settled by now that the prosecution is obliged to establish demand of illegal gratification by the accused. The prosecution in this case would claim that the accused made demand on 12.05.2007 at about 10.30 P.M. The case of the prosecution is that after registering the case in Crime No.17 of 2007, the accused visited the shop of PW.2 at around 10.30 P.M and demanded a sum of Rs.20,000/- and also held out threat of arrest and remand. In order to corroborate the same, PW.7 was examined. But as rightly pointed out by the learned Senior Counsel appearing for the accused, in Ex.P2 complaint, the presence of PW.7 is not at all mentioned. His testimony before the court is also silent on this aspect.

12.The statement of PW.7 recorded under Section 161 of Cr.Pc reached the court after a delay of seventeen months. As regards the second demand on 01.06.2007, it is the case of the prosecution that the accused contacted PW.2 on his mobile at around 06.15 P.M. Both PW.11 and PW.12 admitted in the cross examination that they did not verify the phone number and did not collect any call details. PW.2 also did not mention in his complaint the mobile number from which he received the call. After Ex.P4 entrustment mahazar was prepared, PW.11 directed PW.2 to contact the accused over phone to find out the place where they have to meet for payment of the bribe. PW.2 had contacted the accused and the accused is said to have told him to come to the office of PW.6. Though in Ex.P4 the mobile number of PW.2 is mentioned, the mobile number of the accused was not mentioned in Ex.P4.

13.There is considerable discrepancy in the testimony of PW.2, PW.3 and PW.11 in this regard. PW.2 would admit that his mobile phone did not have any speaker facility. But the shadow witness PW.3 would claim that he had heard the conversation between the accused and PW.2. Since the case of the accused is one of total denial, it was incumbent on the part of the prosecution to establish that there was a call from the accused to PW.2 on 01.06.2007 at about 06.15 P.M and again there was a call from PW.2 to the accused at about 01.15 P.M on 02.06.2007. These are crucial facts. These facts could have been very easily collected and established. In fact, they are the best pieces of evidence to connect the accused with the demand. The omission to collect these details by the investigation officer cannot be characterized as a minor one. Of course, this by itself may not be fatal to the prosecution case. But cumulatively weighed, it undermines the prosecution case.

14.As rightly contended by the learned Senior Counsel for the accused, the father-in-law of PW.2 Thiru.Sidamani had given a complaint against the son-in-law and daughter. The same was enquired into and after getting legal opinion, FIR was registered by the accused against PW.2 and PW.7 on 12.05.2007. It does not look probable that the accused would have come in his two wheeler to the shop of PW.2 that too at about 10.30 P.M to demand payment. PW.2 already become an accused. The accused as a investigation officer in Crime No.17 of 2007 registered against PW.2 could have very easily secured the presence of PW.2 in his office. According to PW.2, he and his wife had to go into hiding for the purpose of obtaining anticipatory bail and that they actually got anticipatory bail on 31.05.2007. Since anticipatory bail is granted, only after notice to the police, the accused was also aware of the fact. Thus, on 01.06.2007, the threat of arrest could not have been held out. It is inconceivable that the accused would have contacted PW.2 on 01.06.2007 at 06.15 P.M to repeat his demand.

15.I, therefore, have no hesitation to come to the conclusion that the prosecution has not established that the accused made a demand for payment of bribe. The specific defence of the accused was that on 02.06.2007, he was called by the Vigilance Police to their office for enquiry since a complaint had been received against him. When the accused appeared for enquiry, he was falsely implicated. Now, the question that arises for my consideration is as to whether the trap was laid in the manner projected by the prosecution. The prosecution would claim that the accused had asked PW.2 to come to the office of PW.6 to pay the bribe amount. But, PW.6 totally denied that any such trap took place. According to the prosecution, the accused came to the office of PW.6 in his scooter, had an interaction with PW.2 and received the bribe amount and thereafter phenolphthalein test was also conducted. But PW.6

totally denied the said version. Even according to the prosecution, after the conducting of phenolphthalein test, they went to Medai Police Station where the City Crime Branch is situated to complete the remaining formalities. It is to be pointed out here that the signature of the accused was not obtained in the labels affixed in the bottles containing the sodium carbonate solutions.

16.This court had to scrutinize the prosecution case with greater care as it has been brought out in evidence that all was not well between the accused and PW.11/trap laying officer. It is admitted that after the accused was transferred from Panavadalichathiram Police Station, PW.11 joined the said station. PW.11 made an allegation that certain documents were not handed over by the accused officer. It ultimately turned out that the accused was not at fault. There was thus strained relationship between PW.11 and the accused officer. PW.11 as well as the accused officer were both in the same rank. Both were Inspectors of Police. When Thiru.Maluk Mudali, the Additional Superintendent of Police was very much available, it was he who could have registered the case. PW.11 would claim that he registered the case only after obtaining oral permission from the Superintendent of Police, Southern Region, Vigilance and Anti Corruption. But then, the oral order was not mentioned in Ex.P15 FIR.

17.When an FIR is registered pursuant to the direction of the jurisdictional court under Section 156(3) of Cr.Pc, it is specifically mentioned in the FIR. Likewise, if the superior officer had given a direction or permission for registering a case, the same could have very well been mentioned in the FIR. Even the Case Diary does not refer to it. The Superintendent of Police who is said to have given oral permission was not examined. Of course, this is not by itself fatal to the prosecution case. But when considered along with other circumstances, it certainly goes to the root of the matter. This is all the more so because, it has been convincingly established and to some extent conceded by the prosecution that the relationship between PW.11 and the accused was not all that good. Of course, PW.11 would not have deliberately foisted a false case. But when he got an opportunity in the form of complaint from PW.2, PW.11 made full use of the same.

18.The learned Senior Counsel for the accused would point out that PW.2 did have an animosity against the accused for having registered Crime No.17 of 2007 against him. On account of the registration of this criminal case, PW.2 and PW.7 had to be away from Tirunelveli from 15.07.2007 to 31.05.2007. It has also been shown that PW.2 was not a lay person. He was earlier in Bangalore and he is said to be having a number of outlets. PW.7 was also projected before this Court as a woman entrepreneur. When this Court expressed a doubt as to whether PW.7 was present in the shop of PW.2 at 10.30 P.M, the learned counsel for the defacto complainant claimed that PW.7 is a woman entrepreneur and that there are quite a few outlets in her name. The accused had been convicted by the court below and sentenced to three years. But the defacto complainant chose to file an appeal before this Court seeking enhancement and wanted maximum sentence to be imposed on the accused. It is also brought out that Crime No.17 of 2007 was ultimately quashed only by effecting compromise between PW.2 and his father in law Sidamani. This shows that registration of Crime No.17 of 2007 was justified. In this background, the testimony of PW.2 cannot be taken as gospel truth and cannot be believed in the absence of due corroboration.

19.The learned Government Counsel fell back on the testimony of PW.3 Muthuraman, shadow witness. He would point out that PW.3 had no animosity against the accused. I am not in a position to agree. It is seen from the testimony of PW.11 that PW.2 came to his office at about 10.30 A.M on 02.06.2007. He gave Ex.P2 complaint. Based on the same, Ex.P15 FIR was registered in Crime No.10 of 2007 under Section 7 of the Prevention of Corruption Act, 1988. A mere look at Ex.P15 FIR would show that it was made ready only by 12.00 Noon. PW.3 was working in the office of TNEB at Thazhaiyoothu and even according to PW.1, the distance between the two offices is 7 kms. PW.11 could have only informed the superior officer. He would have in turn deputed any one of the subordinate officials. According to PW.11, he sent Head Constable Murugan to inform the concerned officer in TNEB for the purpose of deputing any one of the officials as a shadow witness. Therefore, the said Murugan, HC could have left the respondent station only at 12.00 PM. But PW.3 would state that he left his office on 02.06.2007 at about 11.45 A.M itself and reached the Vigilance & Anti Corruption Office at 12.30 P.M. This is impossible.

20.Thus, looked at from any angle, I am of the view that the prosecution had failed to establish its case beyond reasonable doubt. This Court is not giving a character certificate to the accused officer. But then, in a criminal case, the burden lies entirely on the prosecution. The prosecution is obliged to show that the accused officer made a demand of payment for illegal gratification. In this case, the prosecution could not establish the said fact. The trap is said to have taken place in the office of PW.6. But he totally turned against the prosecution. He was declared hostile. Therefore, based on mere doubt and suspicion, I cannot sustain the impugned judgment of the trial court. The accused is entitled to the benefit of doubt. Therefore, in this view of the matter, the impugned judgment of the court below made in Special Case No.42 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli is set aside. The appellant is acquitted.

21.Crl A(MD)No.61 of 2016 stands allowed. The fine amount if any paid by the appellant in Crl A(MD)No.61 of 2016 shall be repaid. The bail bond executed by him shall stand cancelled. Crl A(MD) No.138 of 2016 filed by the defacto complainant stands dismissed.

Sd/-

Assistant Registrar(P & A)

// 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 Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Nagercoil, (Crime No.10 of 2007 registered at Vigilance and Anti Corruption Detachment, Tirunelveli).

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

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

+1 CC to Mr.S.RAVI, Advocate SR.No. 25062
+2 CC to Mr.R.GANDHI, Advocate SR.No. 25183 & 25061

Crl A (MD) No.61 & 138 of 2016
11.12.2020

PM(CO)
TR(26.03.2021) 10P 9C