BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 09.01.2019
PRONOUNCED ON : 17.06.2020
CORAM
THE HONOURABLE MR. JUSTICE P.VELMURUGAN
CRL.A(MD)No.519 of 2018

State Represented by
The Inspector of Police,
CBI, ACB, Madurai. :Appellant /Complainant
(Chennai)

Vs.

C.A.A.Ashokkumar : Respondent/Accused

PRAYER : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the impugned order dated 08.12.2017 acquitting the above named accused person in C.C.No.11 of 2012, (Case No. RC 12(A)/2012 of CBI, ACB, Chennai) passed by the II Additional District and Special Judge for CBI Cases, Madurai.

For Appellant : Mr.R.Sudev Kumar,
for Mr.N.Nagendran,
Special Public Prosecutor.

For Respondent : Mr.C.Vakeeswaran.

JUDGMENT

This Criminal Appeal is filed as against the order of acquittal passed by the trial Court, namely, II Additional District and Special Judge for CBI Cases, Madurai, in C.C.No.11 of 2012, (Case No. RC 12(A)/2012 of CBI, ACB, Chennai).

2.The case has been filed against the respondent in RC 12(A)/ 2012 of CBI, ACB, Chennai, for the offence under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After conclusion of trial, the trial Court acquitted the accused. Aggrieved over the same, the appellant/State has preferred this Criminal Appeal.

3.The allegation as against the respondent is that he was working as Recovery Officer, DRT, Madurai. He demanded a sum of Rs.25,000/- from the complainant, namely, Kamal Chand Jain to process the file and handing over the physical possession of the property which was purchased by his partner, namely, R.Jayaraj in a public auction conducted by the Recovery Officer of DRT, Madurai. The appellant/State after registering the case, completed the trap and investigation laid the charge sheet before the II Additional District Court for CBI Cases, Madurai. The learned Special Judge taken the case on file in C.C.No.11 of 2012.

4.In order to prove the case of the prosecution, on the side of the appellant as many as 15 witnesses were examined as P.W.1 to P.W.15 and 35 documents were marked as Ex.P.1 to Ex.P.35 and produced 5 material objects as M.O.1 to M.O.5.

5. On the side of the defence no oral and documentary evidence was produced. After completing the prosecution evidences when the incriminating circumstances culled out from the prosecution witnesses were put before the respondent, he denied as false.

6. After completion of trial and hearing the arguments of both sides and on a perusal of the entire records, the trial Court found that the prosecution has failed to prove his case beyond reasonable doubt and therefore, acquitted the respondent/accused. Challenging the said judgment of acquittal, the State has filed the present appeal before this Court.

7.The learned counsel for the appellant would submit that one Sri.A.Manimaran David, Proprietor of M/s.M.M.Starch Enterprises, Salem availed various Credit limits amounting to Rs.13,68,700/- from SBI, Siruthozhil Branch, Salem. The loan was secured by Land and Buildings belonging to Sri.A.Manimaran David, situated at 130/4 C and 4 D, Kattur Road, Sivadhapuram, Salem. Since he did not repay the dues to the Bank, the accounts of the above firm was classified as NPA (Non-performing Asset) on 30.06.1999 by the above Bank and the Bank filed a suit in O.A. No.1307 of 2000 before the DRT, Chennai on 18.12.2000 to recover the dues. Later , the case was transferred to Coimbatore in 2002. The learned Counsel for the appellant would further submit that DRT, Coimbatore passed his final order dated 18.01.2008, directing the borrowers to pay Rs.15,93,249.77/- with 9% interest. Subsequently, on the Constitution of DRT, Madurai, the said case was transferred to DRT, Madurai. Based on the aforesaid final order, DRT Madurai issued various notices to the borrowers and guarantors to recover the dues of SBI, but, they did not respond. Hence, the properties of Sri.A.Manimaran David, at Salem was sold in public auction in the sale conducted on 21.12.2011. In which, one Sri.R.Jeyaraj, Chennai participated in the public auction and he has stood as a highest bidder for Rs.20,50,000/- . DRT authorised by Sri.S.Kamal Abdul Nazer, Recovery Officer, the respondent/accused and Sri.S.Gopalakrishnan, Recovery Officers, DRT, Madurai as recovery officers. Both the Recovery Officers, DRT, Madurai conducted the auction sale on 21.12.2000 and the sale certificate was issued on 15.02.2012 in favour of Sri. R. Jayaraj.

8.The learned counsel for the appellant would further submit that since the said property was sealed with semi permanent sheet lock, therefore, Sri.R.Jayaraj (auction purchaser) approached the DRT, Madurai through his partner, Sri.D. Kamal Chand Jain as his representative for issuing physical possession of the said property through letter dated 18.03.2012 addressed to the Recovery Officer, DRT, Madurai. As per his requisition letter dated 03.03.2012, the said Sri.D. Kamal Chand Jain met the respondent/ Recovery Officer, DRT, Madurai on 19.03.2012, who was dealing with the aforesaid matter and requested him for handing over the physical possession of the above said property. At that time, the respondent demanded a sum of Rs.25,000/- as gratification other than legal remuneration and as a motive or reward for processing the letter dated 03.03.2012 and also directed him to pay the said amount on 24.03.2012 at his office, DRT, Madurai.

9.The learned counsel for the appellant would further submit that the said Sri.D. Kamal Chand Jain discussed the issue with his partner, Sri. R.Jayaraj and both were not willing to pay the bribe amount. As per instructin of Sri.R.Jayaraj, a complaint was lodged by Sri.D. Kamal Chand Jain to G.A.Suriya Kumar, Inspector of Police, CBI, ACB, Chennai, who was camping at Madurai, registered a case against the respondent in Case No. RC MA 1 2012 A 0012, for the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 on 24.03.2012. Subsequent to the registration of the case, trap was laid against the respondent on the same day. In pursuance of the aforesaid demand, the respondent reiterated his demand on 24.03.2012 at about 13.15 hours near Mattuthavani Bus Stand and accepted a sum of Rs.25,000/- from Sri.D. Kamal Chand Jain as a motive or reward for processing the subject matter for handing over the physical possession of the auction purchased property, purchased by his partner Sri.R.Jayaraj, by abusing his official position as a public servant as pecuniary advantage for himself through corrupt or illegal means.

10. In the circumstances stated above, he would further submit that on completion of investigation, after obtaining sanction order for prosecution, charge sheet was laid before the II Additional District Court for CBI Cases, Madurai as against the respondent for the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

11. He would further submit that all the prosecution witnesses have categorically narrated the events and supported the case of the prosecution and the prosecution has proved demand made by the respondent, bribe was accepted by the respondent and also recovery made from him. In bribe cases, demand, acceptance and recovery are *sine qua non* and the same have been proved by the prosecution beyond reasonable doubt through oral and documentary evidences. The learned trial Judge failed to consider the settled proposition of law and gave much importance to immaterial contradictions and also acquitted the respondent stated that the appellant has not proved his case beyond reasonable doubt. The trail Court gave the reason for acquittal is not acceptable and it is against the settled proposition of law and the finding of the learned Special Judge has to be reversed and the respondent has to be convicted for the above said offence.

12. The learned counsel for the Respondent would submit that there is no material to show that the respondent was authorised to

deal with the subject matter and also P.W.2 /D.Kamal Chand Jain was authorised to take physical possession on behalf of the auction purchaser, namely, R.Jayaraj and the demand, acceptance and the recovery were not proved. In the trap cases, three ingredients, namely, demand, acceptance and recovery have to be proved. In this case, demand, acceptance and the recovery have not been proved by the appellant beyond reasonable doubt. The place of demand, the place of acceptance and the mode of recovery have also not been proved. Further, the learned counsel for the respondent would submit that at the time of recovery, P.W.3, who is the mahazar witness alleged to have accompanied with P.W.2 has clearly stated that the trap laying officer leading the hands of the respondent and therefore, the possibility of passing over phenolphthalein powder from the hands of the trap laying office to the respondent. The benefit of doubt should be extended to the accused and the accused need not go to the witness box and prove his defence. It is for the prosecution to prove the case beyond reasonable doubt. In this case, the trial Court rightly appreciated the oral and the documentary evidences and extended the benefit of doubt in favour of the respondent and rightly acquitted him, there is no merit in the appeal and hence, he prayed for dismissal of the appeal. In order to support his contention, he has relied upon the Judgment of Hon'ble Supreme Court in **B.Jayaraj Vs. State of Andirapradesh** reported in **2014 0 Supreme (SC) 248** and the Judgment of this Court in **K.Saravanan Vs. State rep. by the Inspector of Police, Vellore** reported in **(2006) 2 MLJ (Crl.) 876.**

13. Heard the learned counsel for both sides and also perused the materials placed on records.

14. It is seen that the case was registered as against the respondent alleging that the respondent was working as Recovery Officer, DRT, Madurai. When the matter was entrusted to him to deliver the physical possession to the auction purchaser, the respondent demanded a sum of Rs.25,000/- to process the file for handing over the physical possession of the property purchased by P.W.12 R.Jayaraj through public auction.

15. Further, P.W.12 purchased the property in public auction conducted by DRT, Madurai and D.Kamal Chand Jain were not willing to give bribe to the respondent. They approached G.A.Suriyakumar, Inspector of Police, CBI, ACB, Chennai /P.W.11 and gave the complaint. Thereafter, P.W.11 registered a case against the respondent. After completing the trap and also after completion of investigation, the Investigating Officer laid the charge sheet before the Special Court.

16. It is seen that P.W.2 is the defacto complainant, who has deposed that he was running a textile business at Erode, P.W.12/ R.Jayaraj, who is his friend as well as his partner doing real

estate business. The said R.Jayaraj purchased the property of 2 Grounds of land and seat covered room through public auction conducted by Debt Recovery Officer, Madurai for Rs.20,50,000/-. The sale certificate was also issued in favour of P.W.12. But, the physical possession was not delivered, hence on 03.03.2012, he sent a letter requested to hand over the vacant possession, for which, he authorized P.W.2 as his representative and gave an authorisation letter. Based on the authorisation letter on 19.03.2012, P.W.2 came to DRT, Madurai and met the respondent, who was dealing with the subject matter and requested him to take necessary steps to deliver the physical possession of the property. At that time, the respondent demanded a sum of Rs.25,000/- to process the file and for handing over the physical possession. In which, P.W.2 informed to P.W.12 and both were not willing to give bribe. Thereafter, P.W.2 again approached the respondent, the respondent reiterated the same and therefore, they decided to give complaint to the Vigilance and Anti Corruption Wing. As such, they approached G.A.Suriyakumar, Inspector of Police, CBI, ACB, Chennai /P.W.11. He conducted the trap and recovered the bribe money from the respondent.

17. P.W.11 G.A.Suriyakumar, Inspector of Police, CBI, ACB, Chennai deposed that his Superintendent of Police informed him that he received a phone call from P.W.2/ D.Kamal Chand Jain allegation of demand of bribe by the respondent, on 23.03.2012 the Superintendent of Police informed P.W.11 to proceed to Madurai. On 24.04.2012, P.W.11 received a complaint from P.W.2 as advised by the Superintendent of Police. He proceeded to Madurai along with trap kit, laptop and printer and also took assistance of M.Raja and Palaniappan, Inspectors of Police, Sivakumar and Balachandran Pillai Constables. They conducted the trap procedures. As per instruction of P.W.11, P.W.2 along with R.Jayaraj/P.W.12 met him at Railway construction Camp Office, Madurai at about 08.00 a.m. P.W.2 submitted the complaint addressed to the Superintendent of Police, CBI, ACB, Chennai alleging that respondent demanded a bribe of Rs.25,000/- from them for processing the file and handing over the possession of the property which was purchased through public auction. On receipt of the complaint, the Superintendent of Police over phone, directed P.W.11 to conduct a trap. P.W.11 further deposed that as per his request, Raja, Inspector of Police arranged two witnesses, one is from Railways, Madurai and another one is from Oriental Insurance Company, Madurai and they reported to him at 11.20. a.m that he received information about the registration of case in RC MAI 2012 A 0012 against the respondent at about 11.30 a.m, dated 24.03.2012 and also preferred the Entrustment Mahazar at 11.35 a.m in the presence of his team consisting of police personnels, namely, Nilasco Arputharaj, Deputy Chief Ticket Inspector, Railways,Madurai, Ramakrishnan [P.W.3], Divisional Manager, Oriental Insurance Company Limitted, Madurai. The Inspector of Police/P.W.11 introduced the P.W.2 and P.W.12 to the witnesses, they narrated the events and they satisfied and also accepted for

standing as witnesses. Thereafter, the pre-trap proceedings were demonstrated before them. The Inspector of Police/P.W.11 asked P.W.2 and P.W.3 to proceed to the office of the DRT, Madurai before proceeding to DRT, Madurai. P.W.11 asked P.W.2 to contact the respondent over cell phone by the time, they had also placed the cell phone of P.W.2 on speaker mode. When P.W.2 talked with the respondent, the respondent asked him to come to Mattuthavani Bus Stand.

18. As per instruction of P.W.11, team members followed P.W.2 and P.W.3. When they went near to the respondent, at that time, the respondent asked about P.W.3, P.W.2 told that P.W.3 is his Manager. P.W.2 asked about the delivery of the auctioned property with the respondent, he reiterated the demand. P.W.2 gave the cover containing with the bribe amount, the respondent received the same from his right hand and changed into his left hand and kept it in his pant pocket. After receiving signal from P.W.2, the trap team proceeded to the place where the respondent was receiving the money from P.W.2. They conducted the phenolphthalein test and collected the solutions on mahazor Ex.P.6. They recovered the money from the respondent and the same was marked as M.O.5.

19.P.W.12, who was the purchaser of the property in a public auction, gave authorisation to P.W2 as friend and partner. P.W.2 has clearly deposed about purchase of the property through public auction conducted by the DRT, Madurai and they approached the Recovery Officer /respondent for getting the delivery of physical possession, for which, the respondent demanded money from P.W.2.

20. P.W.3 was shadow witness, who was working as Manager, Oriental Insurance Company has deposed that on 24.03.2012, as per direction of Chief Regional Manager, he met the P.W.11 in Railway Guest House. He introduced the CBI team members. P.W.2/D.Kamal Chand Jain, read over the complaint, that the Inspector explained about the procedures of trap. The Inspector/P.W.11 received Rs.25,000/- in the denomination of Rs.1,000/-from the P.W.2/complainant. The serial numbers of currencies were noted and applied chemical on the currencies and kept in a cover which was also applied with the chemical and gave it to another witness and directed him to put it in the empty shirt pocket of the complainant, he did so for which an entrustment mahazor Ex.P.5 was drawn. The complainant contacted the respondent over cell phone, which was heard by all the team members as the cell phone was kept on speaker mode. The above proceeding was noted in the mahazar. Further, P.W.3 also deposed that as per instruction of P.W.11, he accompanied with P.W.2 and also corroborated the evidence of P.W.2 regarding the demand, acceptance and recovery. Subsequently, Investigating Officer collected the call details of the mobile phone belongs to the respondent and also P.W.2/complainant from P.W.4.

21. The Deputy Director of Forensic Laboratory, Chennai was examined as P.W.6, he has spoken about the receipt of the phenolphthalein samples solution, which was received from the Investigating Agency and gave a report Ex.P.16.

22. P.W.7 and P.W.8 were furnished the call details to the Investigating Agency regarding the mobile Numbers : 97153 34388 and 93456 19409, with date and time and the same was marked as Ex.P.18.

23. P.W.9, who was working as Director in Department of School Education and Literacy Ministry of Human Resource Development, New Delhi has deposed regarding the procedure of the public auction of the property, further process and hand over the possession.

24. P.W.10/ S.Gopalakrishnan, who was working as Recovery Inspector, DRT, Madurai from February 2011 to February 2014 spoken about the auction sale and also the formalities of the sale and delivery of the possession of the auctioned property.

25. G.A.Suriyakumar, who is the Inspector of Police, CBI, ACB, Chennai, who received the complaint from P.W.2 has examined as P.W.11, he has clearly spoken about the receipt of the complaint from P.W.2, as advised by the Superintendent of Police. He also spoken about the pre-trap proceedings and also the procedures conducted during the trap and also collected the samples. He also collected the material with regard to the telephone conversation between P.W.2 and respondent.

26. On a careful reading of the evidence of P.W.2, he was authorised by P.W.12, the auction purchaser. P.W.3 is the shadow witness who witnessed to the trap conducted by P.W.11. P.W.11, the Inspector of Police, CBI, ACB, Chennai. The evidence of P.W.6/ Deputy Director of Forensic Laboratory, Chennai, clearly established that phenolphthalein solutions were positive in respect of respondent's fingers and his left side pant pocket. Therefore, on reading of the evidence of P.W.2, P.W.3, P.W.6, P.W.11 and P.W.12, the learned counsel for the appellant has submit that once the prosecution has proved its case, initially regarding demand, acceptance and recovery, then presumption under Section 20 of the Prevention of Corruption Act, 1988 come into play. It is for the accused to rebut the presumption. In this case, the appellant has proved his case beyond reasonable doubt through P.W.2, P.W.3, P.W.6, P.W.11 and P.W.12 with documentary evidence and material objects. The respondent has not rebutted the presumption in the manner known to law and also he placed reliance on the judgment of Hon'ble Supreme Court of India in the case of **Andhra Pradesh Vs.R.Jeevaratnam**, dated 30th July 2004.

27. In this case, the Special Judge has stated that the place of demand, acceptance and recovery have not been established and

further, P.W.3 in his cross examination admitted that P.W.11 holding the hands of the respondent and therefore, the possibility of transmitting the phenolphthalein powder from P.W.11 to the respondent. Therefore, the benefit of doubt has been extended to the accused. On careful reading of the evidence of P.W.2, P.W.3 and P.W.11, though P.W.3 who is the shadow witness to the P.W.2 in his cross examination, he admitted the suggestion made by the respondent that P.W.11 holding the hands of the respondent. But, a careful reading of the entire evidence of P.W.2, P.W.3 and P.W.11 the defence counsel did not put such suggestion before P.W.2 and P.W.11. Further, phenolphthalein test was conducted with both the hands fingers of the respondent separately and also pant pocket and all the solution turned pink color. It is not possible, the P.W.11 to hold entire fingers of the respondent. Therefore, the reason stated by the Special Judge is not acceptable.

28.On reading of the entire evidence in toto, the trial Court wrongly came to the conclusion and simply gave much importance to the suggestion made by the defence counsel to the P.W.3. Whereas, they have not put such suggestions to the other witnesses.

29.On reading of the entire evidence of P.W.2, P.W.3 and P.W.11, it is very cleat that there is no doubt about the place of demand, the place of acceptance and place of recovery. The mahazar also very clear. Further, the call details submitted by P.W.7 and P.W.8 also clear that there was a conversation between the P.W.2 and the respondent. The respondent has also denied that the cell phone number is not that of him and he also denied that he has not received the call from the number of P.W.2. Whereas, on complete reading of the evidence of P.W.6 /Deputy Director of Forensic Science Liberator, Chennai gave a report M.O.1 to M.O.3 and also the evidence of P.W.7 and P.W.8/ Regularity and Nodal Department of Reliance Communication Limited gave reports and the same were marked as Ex.P.17 and Ex.P.18. It show that there were conversation between the P.W.2 and the respondent and other witnesses also spoken that all the trap laying team members heard about conversation between the P.W.2 and the respondent over cell phone before proceeding to the spot. As per instruction given by the respondent to P.W.2, P.W.2 proceeded to nearby Mattuthavani Bus stand and the trap laying team proceeded with P.W.2. The evidence of P.W.3 corroborated with P.W.2. P.W.2 and P.W.3 supported the case of the prosecution. P.W.3 corroborated the evidence of P.W.2 and also the evidence of P.W.7 and P.W.8 and their reports strengthen the case of the prosecution.

30. In this circumstances, the unimportant discrepancies and contradictions may not affect the case of the prosecution. It is very difficult to establish the each and every aspects in bribe cases like this and in this case, the evidence of P.W.2 and P.W.3, P.W.6, to P.W.8, P.W.11 and P.W.12 clearly established the case of

the prosecution and therefore, on complete reading of the entire evidence, this Court finds that through P.W.2, P.W.3 and P.W.12 the demand made by the respondent was proved by the appellant, through the evidence of P.W.2 and P.W.3 acceptance was also proved, through P.W.2 and P.W.3 and P.W.11 recovery from the respondent also proved. Further the evidence of P.W.6, P.W.7 and P.W.8 strengthened the case of the prosecution.

31.Under the said circumstances, this Court finds that the prosecution has established his case beyond reasonable doubt. Therefore, as per the statutory presumption under Section 20 of Prevention and Corruption of Act, once the demand, acceptance and recovery are proved, it is for the respondent/ accused to rebut the presumption in the manner known to law.

32. On reading of the above entire evidences, the respondent has not rebutted the presumption in the manner known to law. Therefore, the judgment of the trial Court is perverse. It is settled provision of law, in appeal against acquittal normally Appellate Court cannot interfere with the judgment of the trial Court unless compelled circumstance warranted. This Court very consciously looked into the legal position as well as the oral and documentary evidences in *toto*. In fine, the trial Court failed to appreciate the entire evidence in a right perspective and therefore, this Court re-appreciated the entire evidence and finds that there are compelled circumstances exist in this case to interfere with the judgment of this trial Court and the judgment of the Trial Court is liable to be set aside.

33. In the result, the Criminal Appeal is allowed and the judgment of the II Additional District and Special Judge for CBI Cases, Madurai in C.C.No.11 of 2012, (Case No. RC 12(A)/2012 of CBI, ACB, Chennai), dated 08.12.2017 is set aside. The respondent/accused is convicted for the offence punishable under Sections 7, 13(2) r/w 13(1)(d) of the prevention of Corruption Act, 1988. Since it is reversal judgment, before passing of sentence accused has to be questioned about the sentences proposed to be imposed on him, therefore, the respondent is directed to appear before this Court on 19.06.2020 at 10.30 am.

Sd/-
1706/2020

Pursuant to the direction issued by this Court on 17.06.2020, the respondent/accused has appeared before this Court, today.

2. On knowing the sentence proposed to be awarded to the respondent/accused, the respondent/accused has stated before this Court that he has two daughters and he has to make some arrangements to them and hence, he seeks time for surrendering before the appellant.

3. Heard the learned Special Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondent/accused.

4. After questioning with regard to the sentence, the following sentences are imposed:

> ''The respondent/accused shall undergo 4 years rigorous imprisonment for the offence under Section 7 of Prevention of Corruption Act, 1988 and pay a fine of Rs.15,000/- (Rupees Fifteen Thousand only) in default, the respondent shall undergo six months simple imprisonment and further he shall undergo 4 years rigorous imprisonment for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and pay a fine of Rs.10,000/-(Rupees Ten Thousand only), in default, the respondent shall undergo six months simple imprisonment. Both the sentence shall run concurrently.”

5.The respondent/accused is directed to surrender before the Appellant on 24.06.2020 at 10.30 a.m., failing which, the appellant is directed to secure the respondent/accused to undergo the imprisonment. On surrender, the appellant is directed to produce the respondent/accused before the Central Prison, Madurai.

6. The Registry is directed to issue necessary warrant.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

To

1.The II Additional District and Special Judge for CBI Cases, Madurai.

2. The Superintendent, Central Prison, Madurai.

3.The Inspector of Police,CBI, ACB, Madurai.(Chennai)

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

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

Pre-delivery order made in
CRL.A(MD)No.519 of 2018
17.06.2020

SMA/19/06/2020/10P/7C