Bail Slip (CRL.A.(MD).Nos.66 of 2017)

The Appellant/Accused namely Jawahar Shanthakumar, male, Son of Xavior Francis, in CRL A(MD)No.66 of 2017 was directed to be enlarged on bail vide order of this Hon'ble Court dated 22.03.2017 passed in CRL MP(MD)No.1727 of 2017 in CRL A(MD)No.66 of 2017.

Bail Slip (CRL.A.(MD).Nos.67 of 2017)

The Appellant/Accused namely K.Anandhasekar, male, Son of Kannan, in CRL A(MD)No.67 of 2017, was directed to be enlarged on bail vide order of this Hon'ble Court dated 22.03.2017 passed in CRL MP(MD)No.1770 of 2017 in CRL A(MD)No.67 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD).Nos.66 & 67 of 2017

in CRL.A.(MD)No.66 of 2017 :

Jawahar Shanthakumar ... Appellant/1st Accused

Vs.

State rep. By,
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Thiruchirappalli.
(Crime No.37 of 2008) ... Respondent/Complainant

PRAYER : Criminal appeal is filed under Section 27 of Prevention of Corruption Act, 1988 r/w. 374 of Cr.P.C., to set aside the Judgment of Conviction and Sentence passed by the Chief Judicial Magistrate/Special Court for Vigilance and Anti-Corruption, Karur, in Spl.C.C.No.1 of 2014 dated 09.02.2017.

For Appellant : Mr.K.Suresh

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

CRL.A.(MD)No.67 of 2017

K.Anandhasekar ... Appellant/ Accused No.2

Vs.

State rep. By,
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Thiruchirappalli,
Thiruchirappalli District.

... Respondent/Complainant

PRAYER : Criminal appeal is filed under Section 374(2) of Cr.P.C., to call for the records relating to the Judgment passed in Spl.C.C.No.1 of 2014 on the file of the learned Chief Judicial Magistrate and Special Court, Karur and set aside the same and acquit the appellant/accused No.2 from all charges levelled against him.

For Appellant : Mr.Gopalakrishna Lakshmana Raju,
Senior Counsel,
for Mr.R.Venkateswaran.

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

COMMON JUDGMENT

These two appeals arise out of the Judgment dated 09.02.2017 made in Special C.C.No.1 of 2014 on the file of the Chief Judicial Magistrate/Special Court for Vigilance and Anti-corruption, Karur.

2. Crl.A.(MD)No.66 of 2017 has been filed by the first accused while Crl.A.(MD)No.67 of 2017 has been filed by the second accused. By the impugned Judgment, the appellants have been convicted and sentenced as follows:-

S. No.	Rank of the accused	Offence u/s.	Punishment
1.	A-1	7 of the Prevention of Corruption Act 1988	To undergo 1 year S.I. and to pay a fine of Rs.1,000/- and in default, to undergo one month Simple Imprisonment.
2.	A-1	13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988	To undergo 2 years S.I. and to pay a fine of Rs.2,000/- and in default, to undergo one month Simple Imprisonment.
3.	A-2	7 of the Prevention of Corruption Act 1988	To undergo 6 months S.I. and to pay a fine of Rs.500/- and in default, to undergo one month Simple Imprisonment.

	A-2	13(2) r/w. 13(1) (d) of the Prevention of Corruption Act 1988	To undergo 1 year S.I. And to pay a fine of Rs.1,000/- and in default, to undergo one month Simple Imprisonment.

3. Heard the learned counsel appearing for accused No.1/appellant in Crl.A(MD)No.66 of 2017 and the learned Senior counsel appearing for accused No.2/ appellant in Crl.A.(MD)No.67 of 2017 as well as the learned Government Advocate (crl.side) for the prosecution.

4. Both of them took me through the contentions set out in the respective memorandum of grounds.

5. The learned counsel appearing for accused No.1 had filed elaborate written submissions and additional written submissions also. Both of them wanted this Court to set aside the impugned Judgment, acquit the accused and allow these appeals.

6. 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.

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

8. The prosecution case is as under:-

Accused No.1 Thiru.Jawahar Shanthakumar was working as District Revenue Officer, Karur District from 04.08.2007 to 23.12.2008. P.W.8 P.Selvakumar submitted an application on 30.11.2007 to the District Revenue Officer, Karur, seeking renewal of his gun license that was valid up to 31.12.2007. He received a letter from the office of the District Revenue Officer that he should appear for enquiry on 19.05.2008. The enquiry was postponed to 26.05.2008. On 26.05.2008, the statement of Selvakumar was recorded. Since nothing was heard further, P.W.8 went to the office of the District Revenue Officer, Karur, on 22.12.2008 at about 8.00 p.m. He met accused No.1 Jawahar Santhakumar and sought renewal of the gun license not only for himself but also for his relative Thiru.Balusamy(P.W.10). Accused No.1 is said to have demanded a sum of Rs.6,000/- for passing orders on both these applications. He threatened to reject the applications if the demanded money was not paid. Since Selvakumar was not willing to pay the bribe amount, he approached the respondent on 23.12.2008 at about 9.00 a.m. and lodged Ex.P.15 complaint. Crime No.37 of 2008 was registered by the respondent(P.W.16) for the offence under Section 7 of the Prevention of Corruption Act, 1988. P.W.16 after registering Ex.P.16 First Information Report, arranged shadow witnesses, namely, P.W.3 Yogeswaran, Assistant Engineer, Public Works Department, Trichy and one Sankaranarayanan from a local college. He carried out the other pre-trap formalities and also suitably advised the defacto complainant and the shadow witnesses. The trap party left Trichy on 14.30 hours and reached Karur at 16.50 hours. Between 17 hours and 17.15 hours, P.W.8 Selvakumar along with P.W.3 Yogeswaran(shadow witness) met accused No.1 in his office room. Accused No.1 reiterated his demand and called his camp clerk, namely, accused No.2 Anandhasekar over intercom and on his arrival, directed P.W.8 to hand over the bribe amount to him. Phenolphthalein tainted currency notes were given to accused No.2 who took the same, counted it and handed over the same to accused No.1. Accused No.1 is said to have retained Rs.4,500/- and given Rs.1,500/- to accused No.2. Accused No.1 instructed P.W.8 Selvakumar to wait outside for some time. P.W.8 came out and gave the pre-arranged signal at 17.15 hours. P.W.16 and others entered the room of accused No.1 and P.W.8 identified both the accused. The accused were subjected to Phenolphthalein test which proved positive. Rs.4,500/-, a portion of the bribe amount was seized from the pant right pocket of accused No.1. Likewise the remaining amount of Rs.1,500/- was recovered from accused No.2 Anandhasekar who was also subjected to Phenolphthalein test. Phenolphthalein test turned positive in his case also. The numbers on the currency notes were compared with that of the Entrustment Mahazar(Ex.P.3). Thereafter, P.W.17 took over the investigation and the other witnesses were examined. After obtaining Ex.P.1 and Ex.P.2 sanction orders from P.W.1 and P.W.2 respectively, final report was laid for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988. Cognizance of the offences was taken and the case was taken on file in Special C.C.No.1 of 2014 on the file of the Chief Judicial Magistrate/Special Court, Karur. Summons were issued to the accused. After they appeared, copies were served on the accused. When they were questioned, they denied their guilt. In order to establish its case, prosecution examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.32 and M.O.1 to M.O.9 were also marked. On the side of the accused, two witnesses were examined and Ex.D.1 to Ex.D.3 were marked. The learned trial Judge, as already pointed out, found the accused guilty and sentenced them as mentioned above.

9. The learned counsel appearing for accused No.1/appellant pointed out that even when accused No.1 was examined under Section 313 of Cr.P.C., he filed a statement completely denying the prosecution case. Accused No.1 denied that he met P.W.8 Selvakumar on 22.12.2008. Therefore, the question of having demanded any bribe amount does not arise at all.

10. It is further contended by the learned counsel that the application of P.W.8 was rejected long before and that the file was not even pending with accused No.1. As regards P.W.10 Balusamy, approval was granted already on 10.04.2008 and his file was also not pending with him. The learned counsel challenged the motive of the

defacto complainant. He would state that accused No.1 had taken strong action for removal of some encroachment and the encroacher happened to be a relative of the defacto complainant. The learned counsel would further contend that on 23.12.2008, P.W.8 met the accused and enquired about his license. Accused No.1 replied that his renewal application had already been rejected. After coming out of the chamber, P.W.8 went to accused No.2 who was the camp clerk and attempted to hand over a sum of Rs.6,000/- making it appear as if accused No.1 had instructed the money to be given to accused No.2 towards donation for charity. When accused No.2 came into the chamber of accused No.1 to get instructions, P.W.8 had placed the currency notes on the table of accused No.2. When accused No.2 attempted to return it to P.W.8, the trap party entered.

11.It is also suggested that the money was thrust into the pant pocket of accused No.1 notwithstanding his resistance. The learned counsel would also point out that when accused No.1 filed Crl.O.P.(MD)No.4984 of 2009 for quashing the proceedings, the defacto complainant who was shown as the second respondent filed his counter admitting that he had given a false complaint. The counter filed by the defacto complainant in the quash proceedings was marked as Ex.D.3. The learned counsel submitted that since the demand was not proved, Section 20 of the Prevention of Corruption Act 1988 cannot be pressed into service.

12. The learned counsel drew my attention to some of the discrepancies appearing in the evidence of P.W.3, P.W.8 and P.W.15 with regard to the pre-trap formalities. As regards, what happened during the trap, the learned counsel would point out that while P.W.3 claimed that bribe was given inside the chamber of accused No.1, P.W.8 had deposed that the money was handed over only outside the chamber. Since there are serious discrepancies as regards the place of handing over the bribe amount, the fundamental basis of the prosecution case goes. Likewise there is a serious discrepancy between the evidence of P.W.1 on the one hand and P.W.15 and P.W.16 on the other as regards the trap. While P.W.3 would claim that Phenolphthalein test was conducted first and then the amount was recovered, the other two witnesses would state that the recovery was first effected and then only, Phenolphthalein test was conducted. He would also claim that the very presence of P.W.3 and P.W.15 at the time of trap has not been established. When the witnesses were questioned regarding the place of occurrence and its features, they did not give any specific reply. He also pointed out that admittedly, the applicant was only P.W.8 and the authority concerned was only accused. No.1. Therefore, it is improbable that accused No.1 would have made the demand for payment of bribe or received any bribe amount in the presence of the third party, namely, P.W.3. More than anything else, since both the applications were already dealt with, there was simply no chance for making the demand. The learned counsel also took me through the testimonies of P.W.8 Selvakumar and

P.W.10 Balusamy and pointed out some discrepancies in the evidence. The sanction orders(Ex.P.1 and Ex.P.2) were also challenged as vitiated by non-application of mind. The learned counsel also enlightened on the manner in which a gun license application will be processed. His first contention is that whatever had to be done from the end of accused No.1 had already been completed and accused No.1 cannot be faulted if there was omission on the part of the officials working in the other sections. The learned counsel also took me through a host of decisions.

13. The learned counsel contended that a mere recovery of tainted notes cannot by itself prove the prosecution case and that the demand must also be independently established. For this proposition, he relied on the decisions of the Hon'ble Supreme Court reported in (2016) 1 SCC 713 *(N.Sunkanna V. State of A.P.)* and (2017) 8 SCC 136 *(Mukhtiar Singh V. State of Punjab)*. According to him, the allegation that the accused accepted the bribe amount in the presence of stranger is not probable. In support of his contention, he relied on the decisions of the Hon'ble Supreme Court reported in 1987 (Supp) SCC 266 (G.V.Nanjundiah V. State(Delhi Admn.) and (2015) 10 SCC 230 (Selvaraj V. State of Karnataka). He would point out that the prosecution was obliged to show that the accused voluntarily accepted the bribe amount. There must be corroboration from an independent source. For this proposition, he relied on the decision reported in 1993 SCC Online P&H 452(Gurcharan Singh V. State of Haryana). Merely because, P.W.8 was declared as hostile, his evidence cannot be rejected and it is open to the accused to place reliance on his evidence. For this proposition, he relied on the decision of the Hon'ble Supreme Court reported in 2009 (1) MWN (Cr.) 324 (S.P.Paulraj V. State). The propositions canvassed by the learned counsel appearing for accused No.1 cannot be disputed, particularly, when they are duly backed by the decisions of the Hon'ble Supreme Court.

14. The question that arises for consideration of this Court is as to whether the prosecution had established that on 22.12.2008, accused No.1 demanded bribe of Rs.6,000/- from P.W.8 and whether pursuant to the same on 23.12.2008 at about between 5.00 p.m. to 5.15 p.m., it was accepted.

15. It is not in dispute that accused No.1 was the authority competent to pass orders on the applications for grant of renewal of gun license. It is also not in dispute that P.W.8/defacto complainant as well as his relative Balusamy/ P.W.10 had given applications in this regard. P.W.8/Selvakumar submitted his application on 30.11.2007 while Balusamy had applied for renewal on 14.11.2007. Though almost more than a year had elapsed, neither Balusamy nor Selvakumar received any order from the office of the District Revenue Officer, Karur. The learned counsel appearing for the appellant/accused No.1 eloquently claimed that accused No.1 had

already returned the file and nothing was to be further done at his end. This claim deserves rejection. It has not been established that accused No.1 had actually disposed of the matter at his end. If accused No.1 had disposed of both the applications, certainly orders would have been formally issued and served on both the applicants. But that had never taken place. It is not the case of accused No.1 that orders had been formally issued. In fact there is nothing to show that accused No.1 had affixed the signature and the file had been despatched from his table. If really the applications had been disposed of, P.W.8 would not have come to the office of the first accused on 22.12.2008. The fact that the two applications had been kept pending for more than a year would itself indicate that accused No.1 did not want to give a disposal to them, unless he was taken care. Of course accused No.1 had not approached the applicants through a subordinate staff in this regard.

16.There is a saying in Tamil Literature that *"the stork waits at the sluicegate patiently for bigger fish"* Accused No.1 is probably such a stork in human form. Since the applications had been submitted to him, the applicants will have to necessarily approach him after a point of time and that is exactly what happened in this case. The application which was given in November 2007 remained undisposed till 23.12.2008. The applicant was left with no other option but to meet accused No.1 in person. I therefore do not find any merit in the contention of the learned counsel appearing for accused No.1 that there was no occasion for accused No.1 to make the demand.

17.It is true that the Court cannot go by the testimony of the defacto complainant. In the case on hand, the defacto complainant has proved to be a slippery character. After lodging the complaint against accused No.1, when accused No.1 filed a quash petition, the defacto complainant did an about-turn and supported the case of the accused. The High Court was however not swayed by the change in the stand of the defacto complainant and proceeded to dismiss the quash petition. Therefore, the testimony of P.W.8 will have to be scrutinised with utmost care. It is true that P.W.8 had deposed before the Court that he gave the tainted currency notes to accused Nos.1 and 2. Though P.W.8 had been careful to support the prosecution case in the chief examination, he had tried to oblige the accused in the cross examination. The shift in the stand of P.W.8 alerted the prosecutor who promptly requested the Court to declare P.W.8 as hostile. The learned counsel appearing for the appellant is right that the testimony of hostile witness cannot be discarded in *toto*. But it is left to the discretion of the Court to assess the evidence of the hostile witness. I am satisfied that P.W.8 had testified that the money was handed over to accused No.2 outside the chamber of accused No.1 only to save accused No.1 to undermine the prosecution case.

18.While P.W.8 may be a slippery character, P.W.3 Yogeswaran, shadow witness has absolutely no motive whatsoever against the accused. He was working as Assistant Engineer in the Public Works Department. He was instructed to come to the office of the respondent by his superior to act as shadow witness. He has stated that on 23.12.2008, he accompanied P.W.8 Selvakumar and that they entered the chamber of accused No.1. He deposed that accused No.1 asked Selvakumar as to whether he had brought the bribe amount of Rs.6,000/- as sought by him. He is also said to have taken exception to P.W.8 being accompanied by a third party, namely, P.W.3. When P.W.8 Selvakumar attempted to give money, accused No.1 called accused No.2 over intercom, when accused No.2 Anandhasekar entered the room, accused No.1 directed P.W.8 to give the bribe amount to accused No.2. Accused No.2 received the money, counted the same and gave it to accused No.1. Accused No.1 retained Rs.4,500/- and gave Rs.1,500/- to accused No.2. P.W.3 identified M.O series as the recovered bribe amount. He deposed that both accused No.2 as well as accused No.1 were subjected to Phenolphthalein tests and that the same turned positive. He had also clearly deposed as regards the recovery of the tainted money from the accused. Ex.P.4 was marked through P.W.3. The testimony of P.W.3 inspires the confidence of this Court. He had no axe to grind against the accused. He had no prior acquaintance with them. He merely acted as a shadow witness and his testimony can be taken as sufficient corroboration of the prosecution case.

19.The contention that the sanction orders are vitiated by non-application of mind cannot be accepted. As pointed out by the learned Government Advocate(Crl. Side), the decision of the Hon'ble Supreme Court reported in (2013) 8 SCC 119 *(State of Maharashtra Vs. Mahesh G. Jain)*, would provide a complete answer to the said contention. It was held by the Hon'ble Supreme Court that the Courts should not adopt a technical approach. The granting of sanction is an administrative act. The competent authority must be *prima facie* satisfied that the facts alleged against the accused constitute offence. In this case, both the sanctioning authorities, namely, P.W.1 and P.W.2 were examined. They had clearly stated that they were satisfied that there was *prima facie* case against the accused. Therefore, the question of going further into the matter will not arise at all. In any event, there is no failure of justice to the accused. There is also no merit in the contention of the learned counsel appearing for accused No.1 that since accused No.1 had been litigating against the Government right up to the Hon'ble Apex Court, he had been framed in this case. Accused No.1 was litigating against the Government for enforcing his right. It is inconceivable that merely because, an officer files a case against the Government, he would be falsely implicated. Every year thousands of petitions are filed by the Government servants. I therefore find this contention to be without merit. Lodging of Ex.P.15 complaint appears to be quite natural. The learned counsel appearing for accused No.1 would claim that on 22.12.2008, accused No.1 did not meet the accused at all because it has been shown that he was engaged in official work. His contention is that it is improbable that at 8.00 p.m. in the late evening, the accused could have met P.W.8. This Court can take judicial notice of the fact that certain departments particularly, the Revenue Department has to necessarily work in the evening till late hours on any working day. There is nothing unnatural about the office of the District Revenue Officer remaining open at 8.00 p.m.

20.The learned trial Judge, by a well reasoned Judgment had found the first accused guilty. On a careful re-appreciation of the evidence on record, I have to necessarily concur with the said finding. I am satisfied that the prosecution has established its case beyond reasonable doubt against the first accused. Therefore, the conviction imposed on the first accused for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988 is confirmed. However, considering the mitigating circumstances, the sentence imposed on accused No.1 is reduced from two years Simple Imprisonment to one year Simple Imprisonment both as regards the offence under Section 7 of the Prevention of Corruption Act and under Section 13(2) r/w. 13(1)(d) of the Act. The sentences imposed on accused No.1 will run concurrently.

21.Crl.A.(MD)No.66 of 2017 is partly allowed. The trial Court is directed to secure the first accused to undergo the remaining period of sentence. The bail bond, if any, executed by him shall stand cancelled.

22.As regards the accused No.2, I am satisfied that it is not the case of the prosecution that he had ever made any demand on P.W.8. Accused No.2 is only a camp clerk. Accused No.1 is the superior officer. The case of the prosecution was that when P.W.8 defacto complainant and P.W.3 shadow witness entered the office room of accused and P.W.8 attempted to hand over the bribe amount, Accused No.1 contacted accused No.2 over intercom and instructed him to come. When the superior officer gave instruction, accused No.2 was obliged to honour the same. When accused No.1 directed accused No.2 to accept the amount given by P.W.8, accused No.2 accepted the same. The learned Senior counsel would state that accused no.2 had no choice in the matter. He was acting mechanically based on the instructions of his superior. Of course as rightly contended by the learned Government Advocate(Crl. Side), illegal orders of the superior officer are not to be obeyed. But accused No.2 did not have any time to reflect. I am satisfied that accused No.2 is certainly a victim of circumstances. Of course the prosecution would state that the portion of the bribe amount was recovered from accused No.2. As already noted, accused No.2 did not play any role on his own. P.W.8 to oblige Accused No.1 had deposed against A2 in the cross-examination. I am satisfied that accused No.2 cannot be said to have abetted accused No.1. He had merely obeyed the directions of accused No.1. Therefore, I am satisfied that no case is made out against accused No.2.

23.The Court below failed to appreciate properly the role played by accused No.2. He was mere like a robot acting on instructions of accused No.1. He did not have any culpable mind. Therefore, the conviction and the sentence imposed on accused No.2 is set aside. Accused No.2 is acquitted. Crl.A.(MD)No.67 of 2017 is allowed. The bail bond, if any, executed by accused No.2, shall stand cancelled and fine amount, if any, paid by him is to be repaid to him.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

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

(*)TO BE SUBSTITUTED THE ORDER ALREADY DESPATCHED ON 16.03.2021

1. The Chief Judicial Magistrate/
   Special Court for Vigilance and Anti-Corruption, Karur.

2. The Inspector of Police,
   Vigilance and Anti-Corruption Wing,
   Thiruchirappalli.

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).

(*)+1 CC to Mr.K.SURESH, Advocate SR.No. 25679

CRL.A.(MD).Nos.66 & 67 of 2017
15.12.2020

ARK(CO)
TR(16.03.2021) 10P 6C
TR(23.03.2021) 10P 7C