IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.363 of 2011

1.V.Arumugam(died)
2.Smt.Thulasimani
3.A.Raghupathy
4.S.Premavathi
(Appellants 2 to 4 in the place of the deceased/ appellant amended as per the order in Crl.M.P.No.10780 of 2021 in Crl.A. No.363 of 2011, dated 21.10.2021)

..Appellants

Vs.

State of Tamil Nadu rep.by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Erode,
(Crime No.3/Ac/2003)

..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the judgment of the learned Special Judge/Chief Judicial Magistrate, Erode, in Spl.C.No.12 of 2004, dated 15.06.2011.

For Appellants :Mr.A.K.Kumaraswami, Senior Counsel for Mr.Kaithaimalai Kumaran

For Respondent :Mr.C.E.Pratap, Government Advocate (Crl.Side)

J U D G E M E N T

The deceased first appellant is the sole accused, in Spl.C.No.12 of 2004, on the file of the learned Special Judge / Chief Judicial Magistrate, Erode. He stood charged for offences under Sections 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act (hereinafter referred to as the Act). By judgment dated 15.06.2011, the trial Court convicted him under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption

Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for one month. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, the appellant / accused died and his legal representatives were substituted to prosecute the present appeal.

2. The case of the prosecution in brief is that, the deceased appellant/accused, was working as Village Administrative Officer in Pazhamangalam Village, Erode district. P.W.2/defacto complainant approached the accused for transfer of patta in his favour based on a Civil Court decree. The accused demanded a sum of Rs.2,000/- as illegal gratification for transferring the patta. However, on persuasion, he agreed for Rs.1,000/- and directed P.W.2 to pay it on or before 28.05.2003. Immediately, the P.W.2 approached the respondent police and filed a complaint. Based on that, the respondent police registered a F.I.R. in Crime No.3/Ac/2003/ER for offences under Section 7 of the Prevention of Corruption Act and recorded his statement. Thereafter, P.W.17, the Inspector of Police, sought the assistance of P.W.3, who was working as a Special Officer in the Weavers Cooperative Society and he prepared the Mahazar and prepared for the trap. Thereafter, P.W.2 met the accused, where he demanded the money and P.W.2 handed over the same to the accused. Immediately, P.W.17 and other officers rushed there and recovered the money from his shirt pocket and conducted sodium carbonate test which was proved positive, then P.W.17 arrested the accused and prepared the mahazar and handed over the investigation to P.W.18, the Deputy Superintendent of Police. He recorded the statements of all the witnesses and on completion of investigation filed the final report for offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

3. Based on the above materials, the trial Court framed appropriate charges. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined, 34 documents and 5 material objects were marked.

4. P.W.2 is the defacto complainant, but he turned hostile during cross examination. However, the Trial Court relying upon the chief examination of P.W.2 and P.W.3 the accompanying witness, convicted the accused. Now challenging the said conviction, the present appeal has been filed.

5. Mr.A.K.Kumaraswami, learned senior counsel, appearing for the appellants would contend that the main witness i.e. the defacto complainant/P.W.2 has turned hostile. P.W.4 who is the Village Assistant, working under the accused Village Administrative Officer has clearly deposed that both the defacto complainant and the accused belongs to the same village and closely related to each other, there is a civil dispute between them. That apart the accused as a Village Administrative Officer was collecting money for renovation of his village temple and only for that purpose, P.W.2 handed over the money to the accused. P.W.3, the accompanying witness, also did not spoke about the demand of illegal gratification said to have been made by the accused. In such circumstances, in the absence of any evidence of demanding illegal gratification, based on mere recovery, the conviction cannot be imposed. According to the learned senior counsel, the trial Court mainly relied upon the chief examination of P.W.2 and convicted the accused, which is not maintainable in the eye of law.

6. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent submitted that,even though P.W.2 turned hostile, in his chief examination, he has clearly stated that the accused demanded Rs.1,000/- as bribe for transferring the patta and he turned hostile in the cross examination. That apart, the evidence of P.W.3 also corroborate the evidence of P.W.2 and with other circumstances the prosecution has clearly proved the demand. That apart, in the trap conducted by the respondent police, the accused was caught red handed and the Phenolphthalein test was proved positive and the money was also recovered from the accused. Considering all those materials, the trial Court rightly convicted the accused and there is no reason to interfere with the well considered judgement of the trial Court.

7. I have considered the rival submissions and also perused the materials.

8. P.W.2 is the defacto complainant and he turned hostile during cross examination, further, in his evidence, P.W.2 has clearly stated that there is previous enmity between the accused and P.W.2, and the accused in his capacity as Village Administrative Officer was collecting money from the villagers for renovating the village temple. Making use of the circumstance, in order to wreck vengeance against the accused, P.W.2 has given a complaint as if the accused demanded illegal gratification. His evidence has been corroborated by the

evidence of P.W.4, a Village Assistant, working under the accused. In his cross examination, he has clearly stated that P.W.2 has given an application for transfer of patta and the said application was submitted before the Revenue Inspector's Office twenty days prior to the date of occurrence. P.W.2, told him that he would wreck vengeance against the accused before his retirement. He further deposed that the accused was collecting money only for renovation of a local temple.

9. From the above evidence, it could be seen that there is no demand for illegal gratification by the accused. Even the evidence of P.W.3, the accompanying witness, has not spoken about the illegal demand made by the accused, he has spoken only about the recovery of money from the accused.

10. It is settled law that mere possession and recovery of the currency notes from the accused without any proof of demand will not bring home the offence under Section 7 of the Act. Demand of illegal gratification is sine qua non to constitute the said offence. It is also settled that insofar as the offence under Section 13(1)(d) of the Act, in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. That apart, it is only on proof of acceptance of illegal gratification the presumption can be drawn under Section 20 of the Act, that such gratification was received for doing or forbearing to do any official act, without proof of demand of illegal gratification, conviction cannot be imposed.

11. It is also equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond reasonable doubt. The initial onus is on prosecution to prove beyond reasonable doubt, in situation where there is a legal presumption, the onus on the accused is only to explain on the basis of preponderance of probabilities, the initial burden always on the prosecution to prove the demand and acceptance of illegal gratification only if it is successfully discharged by the prosecution, then the burden of proof shifts on the accused.

12. The Hon'ble Supreme Court in Selvaraj Vs. State of Karnataka reported in (2015) 10 SCC 230 has observed as follows:

> "The allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by

adducing clinching evidence. Recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe."

"The prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case."

13. Further the Hon'ble Supreme Court in C.Sukumaran Vs. State of Kerala reported in (2015) 11 SCC 314 has observed as follows:

"It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Section 7 and 13(1) (d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1) (d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution."

14. In the instant case, the prosecution has failed to discharge its initial burden that there is a demand for illegal gratification by the accused. From the evidence available on record, it could be seen that the accused was collecting money only for renovation of a local temple. In the above circumstances, the presumption under Section 20 of the Act will not arise.

15. Considering all those circumstances, this Court is of the considered view that prosecution has miserably failed to prove the demand for illegal gratification by the accused and consequently the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act is not made out against the accused. Hence, the accused is entitled for acquittal.

16. In the result,

(i) The appeal is allowed; the conviction and sentence imposed on the appellant/accused by the learned Special Judge /

Chief Judicial Magistrate, Erode in Spl.C.No.12 of 2004, dated 15.06.2011, is set aside and the appellant/accused is acquitted.

(ii) The fine amount, if any paid, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ari/kk
To

1. The Special Judge / Chief Judicial Magistrate, Erode.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption, Erode,
   (Crime No.3/Ac/2003)

3. The Public Prosecutor,
   Madras High Court.

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 63114.

Crl.A.No.363 of 2011

BS(CO)
SP(27/12/2021)