



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.12.2021
CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.A.No.616 of 2016

State represented by
The Public Prosecutor,
High Court, Madras-104.
(Crime No.2/AC/2008/DP
of Dharmapuri V&AC)

... Appellant/ Complainant

Vs

1. Dr. P.Venkatesan

2. Tr.G.Gandhi

... Respondents/Accused

Criminal Appeal is filed under Section 378 of Cr.P.C. to allow the appeal and set aside the judgment of acquittal dated 06.05.2016 in Special C.C.No.06/2009 on the file of the Special Court cum Chief Judicial Magistrate Court, Dharmapuri and convict the respondent/accused (A1 & A2) as charged.

For petitioner

... Mr. C.E.Pratap,
Government Advocate (Crl.side)

For respondents

... Mr. P.H. Manoj Pandian,
for R1

... Mr. R.Ezhilarasan,
for R2

ORDER

Against the order of acquittal, passed by the learned Special Judge, Special Court/Chief Judicial Magistrate Court, Dharmapuri, in Spl.C.C.No.6 of 2009, dated 06.05.2016, the State is before this Court with this Appeal.

2. The respondents 1 and 2 are accused in the above said Spl.C.C. and they stood charged for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988.



After trial, by judgment dated 06.05.2016, the trial Court acquitted both the accused. Against the order of acquittal, present appeal has been filed before this Court.

WEB COPY

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

A1, in this case has been working as a Doctor in the Government Medical College Hospital, Dharmapuri. A2 has been working as a compounder under A1 and both are public servants. The defacto complainant in this case, namely, Muniyappan, is a physically challenged person. For the purpose of getting some concession in railways, he required a certificate from A1. When the defacto complainant approached A1, he has demanded Rs.350/- for the purpose of issuing certificate. Out of which, Rs.300/- go to A1 and Rs.50/- will go to A2, Immediately, the defacto complainant/P.W.3 went to the respondent police and lodged a complaint before P.W.11.

4. P.W.11, the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri, registered a case in Crime No.2/AC/2008, for the offences under Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, and commenced investigation, and prepared trap along with two witnesses, wherein, P.W.4, is a Sub-Inspector of local Fund Audit, accompanied the defacto complainant/P.W.3. Then, both P.W.3 and P.W.4 went to the hospital along with the trap officials and handed over a sum of Rs.350/- (7 number of Rs.50 currency notes) to A1, and A1 kept Rs.50/-, in his pant pocket, and handed over the remaining sum of Rs.300/-(6 number of Rs.50 current notes) to A2 and asked him to change the Rs.50/- notes into Rs.100/- notes. Immediately, the Deputy Superintendent of Police, caught the accused red handed. A sum of Rs.300/- was recovered from A2 and a sum of Rs.50/- was recovered from A1. Thereafter, he has conducted a Sodium Carbonate test, which turned positive, then, he has prepared a Mahazar and arrested the accused. After completion of investigation, he has filed a final report.

5. Based on the materials, the Trial Court framed charge under Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988 against both the accused, The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 25 documents were exhibited, besides 11 Material Objects were marked.

6. Out of the witnesses examined, P.W.3 is the defacto complainant. However, he turned hostile in the cross examination. P.W.4 is the accompanying witness, according to him, he accompanied P.W.3 to hospital, wherein, A2 asked with



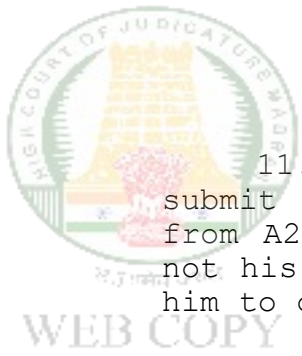
the defacto complainant, whether money is ready, thereafter, he handed over Rs.350/- in Rs.50/- denomination to A1, out of which, A1 kept Rs.50/- and gave the remaining Rs.300/- to A2 for changing the same to denomination of Rs.100/- notes. Thereafter, P.W.11 and other officials arrested both the accused and recovered money from them and conducted Sodium Carbonate test. P.W.11, the Investigating Officer elaborately speaks about the complaint given by PW.3 and also the investigation conducted by him.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they have denied the same as false. However, they did not choose to examine any witness or mark any documents on their side.

8. Having considered all the above materials, the trial Court acquitted all the accused, in respect of the charge, as detailed in the first paragraph of this judgment. Aggrieved against the acquittal of the accused, the present Criminal Appeal has been filed by the State.

9. The learned Special Public Prosecutor, appearing for the appellant would submit that even though P.W.3/defacto complainant turned hostile, the evidence of P.W.4 and P.W.11 and other materials, like, Seizure Mahazar, clearly established that A1 and A2 demanded bribe from P.W.3 and also received the illegal gratification and a trap was conducted, which proved positive. In the above circumstances, the Trial Court ought not to have acquitted the accused on the ground of P.W.3 turned hostile. He would further submit that even the evidence of P.W.3, is sufficient to show that there was a demand for illegal gratification and the Trial Court overlooked those evidence, and mechanically acquitted both the accused, on the ground that there is no evidence for demand, and hence the same is liable to be set aside.

10. Per contra, Mr. Manoj Pandian, the learned counsel appearing for the first respondent/A1, would submit that the main witness, namely, the defacto complainant turned hostile, and even in the evidence of P.W.4, there is nothing to show that A1 has demanded illegal gratification. So far as recovery of Rs.50/- from the first respondent/A1 is concerned, it is only the fees payable for issuing certificate. The trial Court, considering all the evidence, has rightly come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the respondents /accused and there is no reason to interfere with the order of acquittal.



11. The learned counsel for the 2nd respondent/A2 would submit that as P.W.3 turned hostile, mere recovery of Rs.300/- from A2 itself is not sufficient to convict the accused, it is not his duty to issue certificate and there is no necessity for him to demand bribe from the defacto complainant.

12. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

13. The appeal is against the order of acquittal. P.W.3, is the defacto complainant, he turned hostile and the Public Prosecutor has also extensively cross examined him. So far as the demand of bribe amount is concerned, yet another available witness is P.W.4. A careful perusal of the evidence of P.W.4, nothing could be seen regarding demand of illegal gratification from the defacto complainant. Except that, there is no evidence available to prove the demand made by the accused.

14. Mere possession and recovery of currency notes from the accused without any proof of demand will not bring home the offence under Section 7 and in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any pecuniary advantage can not be held to be established. The trial Court, rightly considered the evidence of P.W.3 and P.W.4 and other materials, has come to a conclusion that there is no proof for demand and acquitted the accused.

15. 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."



WEB COPY

16. 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."

17. It is settled principal of law that, in an order of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him, the fundamental principle of criminal justice delivery system is that, every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

18. In the above circumstances, I find no illegality or perversity in the judgment of the trial Court and there is no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

19. In the result, the Criminal Appeal is dismissed. The judgment of the trial Court in Spl.C.C.No.6 of 2009 dated 06.05.2016 is hereby confirmed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



mrp

To

1. The Special Court cum Chief Judicial Magistrate Court,
Dharmapuri .

2. The Deputy Superintendent of Police, Vigilance and Anti
Corruption, Dharmapuri

3. The Public Prosecutor,
High Court, Madras-104.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1 cc to Mr.R.Ezhilarasan, Advocate Sr.NO. 63109

+1 cc to M/S.A.V.Partners, Advocate Sr.NO. 63274(05.01.2022)

Crl.A.No.616 of 2016

PM(CO)

A.SK(03.01.2022)