IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 24.03.2022	Orders pronounced on 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.A.No.35 of 2012

1. R.Eswaran (died)

2. Nagamani,
W/o.kate R.Eswaran ... Appellants/Accused

(Cause title amended as per order in Crl.O.P. No.18280 of 2021 dated 07.12.2021)

Vs.

State, represented by
The Inspector of Police
Vigilance and Anti-Corruption
Coimbatore.
(Cr.No.13/AC/2005/CB) ... Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code against the judgment of conviction and sentence passed in Special Case No.4 of 2011 by the learned Special Judge for Prevention of Corruption Act Cases, Coimbatore on 26.12.2011.

For Appellant : M/s.L.Karthiga

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed challenging the judgment of conviction and sentence passed in Special Case No.4 of 2011 by the learned Special Judge for Prevention of Corruption Act Cases, Coimbatore on 26.12.2011

2. Respondent filed a final report against the deceased appellant alleging that the deceased appellant when working as bill collector at Chinnavedampatti, Special Village Panchayat, defacto complainant PW2 Selvaraj approached him for assessing property tax for his newly constructed house at Door No.14, Velan Nagar, Udaiyampalayam. He submitted an application on 04.07.2005 along with relevant documents. Then he visited the office on 19.07.2005 and enquired about his application. There, appellant was said to have demanded a sum of Rs.500/- towards tax receipt and illegal gratification. PW.2/defacto complainant met the appellant on 21.07.2005 at 11.00 a.m. Appellant handed over tax receipt to PW.2/defacto complainant and defacto complainant paid Rs.275/- towards tax. Immediately, appellant snatched the property tax receipt from defacto complainant and returned Rs.275/- stating that defacto complainant had not given the bribe amount demanded by him. When the defacto complainant expressed his inability to pay, deceased appellant asked him to come with Rs.500/- on 22.07.2005. Therefore, defacto complainant gave a complaint and a trap was laid. Deceased appellant received illegal gratification of Rs.222/- at 3.22p.m on 22.07.2005. Therefore, deceased appellant committed an offence under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

3.On the basis of this final report, charges under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 were framed against the deceased appellant.

4.Prosecution examined PW.1 to PW.10 witnesses, produced Exs.P1 to P20 documents and MO.1 to MO.7 material objects. DW.1 was examined and Ex.D1 was marked on the side of the appellant.

5.It is seen from the evidence of prosecution witnesses that PW.2 constructed a house in 2005. He met the deceased appellant Eswaran on 04.07.2005 in connection with assessment of property tax for his house and handed over an application along with the documents. He told PW.2 that he was going on leave and he would inspect the house and fix the tax. PW.2 met him after some days and deceased appellant asked him to come two days later. On 19.07.2005 at 4 p.m, he met deceased appellant in Chinnavedampatti Panchayat Office and asked why the property tax was not assessed so far. Deceased appellant demanded him the tax amount with the bribe amount, totally a sum of Rs.500/-. Next day, he met him with money. Deceased appellant informed him that the records were placed before the Executive Officer for signature. He asked PW.2 to bring Rs.500/- next day. On

21.07.2005 at about 11.00 a.m, he met the deceased appellant. Deceased appellant asked him whether he brought Rs.500/- towards the tax and bribe. PW.2 responded in affirmative and gave Rs.275/- to the deceased appellant and deceased appellant handed over the receipt to him. After counting the money, deceased appellant asked him what happened to the amount demanded by him. PW.2 told him that he had no money to pay him and would pay later. Then deceased appellant snatched the receipt from him and directed him to bring Rs.500/- and get the receipt. PW.2 pleaded with him to give the receipt, but deceased appellant had not heeded to his request. He directed PW.2 to come on 22.07.2005 around 12 noon to 1.00 p.m. PW.2 did not want to give bribe to the deceased appellant and gave Ex.P4 complaint to the Inspector, Vigilance Department.

6. PW.9, Inspector of Police, Vigilance and Anti-Corruption Wing, on receiving Ex.P4-Complaint, registered the case in Crime No.13/AC/2005/CB under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and the First Information Report is Ex.P17. He made arrangements to secure Government Officials as witnesses to trap proceedings. As per his request, one G.Rangaraj, Junior Assistant from South Taluk Office, Coimbatore and P.Gopalan, Junior Assistant from North Taluk Office were deputed. He introduced them to PW.2 and gave copy of the First Information Report for them to read. After reading the First Information Report, they enquired with PW.2 about the veracity of the complaint. PW.2 presented Rs.500/- meant for giving to the deceased appellant. Then PW.9 explained to PW.2 and witnesses about the significance of the trap proceedings and demonstrated sodium carbonate and phenolphthalein test process. He prepared Ex.P7-Entrustment Mahazar. Then, they proceeded to appellant's office. PW.2 and PW.3 Gopalan were dropped at a distance and they proceeded to appellant's office. PW.9 and his party took position and watching the proceedings. On entering the deceased appellant's office, deceased appellant asked PW.2 why he was so late and whether he brought the tax amount and also the bribe amount of Rs.500/-. PW.2 told him that he brought the money. Appellant demanded the money and PW.2 handed over Rs.500/- to the deceased appellant. He received the money and counted using both his hands and kept it in his shirt pocket. Then handed over house tax receipt for Rs.278/-. After that, both PW.2 and PW.3 came out and PW.2 signalled to the Inspector with the pre-arranged signal. PW.3 corroborated the evidence of PW.2 with regard to the demonstration of sodium carbonate and phenolphthalein test, preparation of Entrustment Mahazar by PW9, demand of Rs.500/- by the deceased appellant and its acceptance.

7. On being signalled by PW.2, PW.9 approached PW.2 and PW.3 and they explained to him what had happened inside the office and PW.2 identified the deceased appellant. He introduced himself to the deceased appellant. He made arrangement for preparation of sodium carbonate solution and asked the deceased appellant to dip his right hand fingers in the solution Deceased appellant dipped his right hand fingers and the solution changed into light pink colour. Then similar exercise was done for left hand fingers and the solution changed into light pink colour. PW.9 asked him about the money received from PW.2. Deceased appellant took Rs.500/- from his left side shirt pocket and produced. PW.9 directed witness Gopalan to receive the money and count it. He received the money, counted it and compared it with the numbers entered in the Entrustment Mahazar. Then another sodium carbonate solution was prepared and deceased appellant's shirt's inside left side pocket was dipped into the solution and the solution changed into light pink colour. Deceased appellant produced the house tax receipt for Rs.278/-. PW9 prepared Ex.P6 and Ex.P11- Mahazars, Ex.P18-rough sketch, sent Ex.P19-advance information to the Court and conducted search in the house of the deceased appellant. No incriminating material was seized from the house of the deceased appellant.

8. PW.10 took up further investigation in this case and sent the sodium carbonate and phenolphthalein solution for chemical analysis. PW.8 - Assistant Director of Forensic Science Department analysed,

(i) sealed glass bottle containing 150 ml of pink turpid liquid labelled 'S1' solution of phenolphthalein test conducted over right hand fingers of accused-R.Eswaran.

(ii) sealed glass bottle containing 165 ml of pink turpid liquid labelled 'S2' solution of phenolphthalein test conducted over left hand fingers of accused-R.Eswaran.

(iii) sealed glass bottle containing 150 ml of pink turpid liquid labelled 'S3' solution of phenolphthalein test conducted over shirt's inside left side pocket of accused-R.Eswaran.

(iv) sealed cover labelled 'A' sodium carbonate powder

(v) sealed cover labelled 'B' phenolphthalein powder.

9. On analysis, he found the presence of phenolphthalein and sodium carbonate in items 1,2 and 3. PW.10, in continuation of his investigation, recorded the statement of witnesses, obtained Ex.P1-prosecution sanction and after completing the investigation, filed final report.

10. On considering the oral and documentary evidence, learned trial Judge found the appellant guilty under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and imposed sentence of one year Rigorous Imprisonment and a fine of Rs.1,000/-, in default to pay the fine, to undergo one month Rigorous Imprisonment under Section 7 of Prevention of Corruption Act; two years Rigorous Imprisonment and a fine of Rs.2,000/-, in default to pay the fine amount, to undergo two months Rigorous Imprisonment under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. Challenging the said judgment, this Criminal Appeal is preferred.

11.The learned counsel for the appellant submitted that the prosecution failed to prove the alleged demand and acceptance of illegal gratification by the deceased appellant. The evidence of PW2 shows that he contradicts in his evidence with regard to the allegations made in the complaint about the dates of alleged demand. It is stated in the complaint that the deceased appellant demanded bribe first time on 19.07.2005. Evidence of PW2 shows that the deceased appellant had not demanded any illegal gratification on 20.07.2005 and 21.07.2005. Demand is sine qua non for proving the charges framed against the deceased appellant. When the demand is not satisfactorily proved, mere acceptance of money by the deceased appellant and its recovery from him will not prove the charges. Though the receipt was prepared, PW2 had not brought the sum of Rs.278/- towards property tax. Therefore, the deceased appellant got back the receipt from PW2, with a direction to bring the amount towards the property tax. On the date of trap proceedings, PW2 handed over the money. Thinking that PW2 was paying the property tax amount, deceased appellant received the amount without counting the amount and kept in his shirt pocket and that was recovered from him during the trap proceedings. Though this explanation was given to the trap laying officer, that was not accepted. Deceased appellant was falsely implicated by PW2 for the reason that when he demanded the reduction of property tax, the deceased appellant expressed his inability to reduce the property tax and therefore, false complaint was given against him. Trial Court did not consider these vital aspects. Thus, the learned counsel for the appellant prayed for setting aside the judgment of the trial Court.

12.Per contra, the learned Additional Public Prosecutor submitted that the first demand of illegal gratification was made once on 19.07.2005, followed by the reiteration of demand of illegal gratification on 21.07.2005. Again the deceased appellant demanded bribe amount on 22.07.2005, prior to trap proceedings. PW2 had clearly given evidence with regard to the demand of illegal gratification by the deceased appellant on three occasions, which is corroborated by the evidence of PW3 on the date of trap. The motive alleged by the appellant for prosecution is not supported by any material evidence. The trial Court has, on going through the evidence, rightly convicted and sentenced the deceased appellant and thus, he prayed for confirming the judgment of the trial Court and for the dismissal of the appeal.

13.Considered the rival submissions and perused the records.

14.Points for consideration:

1.Whether the prosecution has failed to prove the demand of illegal gratification ?

2.Whether the judgment of the trial Court is liable to be set aside in the light of the submissions made by the learned counsel for the appellant in this appeal?

15.As narrated above, the charges against the deceased appellant are that he demanded a sum of Rs.500/- to assess the property tax, i.e., Rs.275/- towards property tax and Rs.225/- towards illegal gratification. When he received a sum of Rs.500/- towards property tax and illegal gratification on 22.07.2005, he was apprehended with the money and thus prosecuted. The main submission of the learned counsel for the appellant is that the case of the prosecution and the evidence of PW2 shows that he met the deceased appellant on 04.07.2005, handed over the application with connected documents for the assessment of property tax. Then the deceased appellant said to have demanded illegal gratification on 19.07.2005, 21.07.2005 and finally on 22.07.2005. It is claimed by the learned counsel for the appellant that on 04.07.2005, the deceased appellant was on casual leave and he did not go to office. There is no absolute possibility of PW2 meeting the deceased appellant on 04.07.2005. In support of his submissions, he referred to the evidence of PW6 that the deceased appellant was on casual leave on 04.07.2005.

16.Ex.P5 is the complaint, it is claimed by PW2 in this complaint that he visited Chinnavedampatti, Special Minor Panchayat office on 04.07.2005 in connection with the assessment of property tax for his newly constructed house and met the deceased appellant R.Eswaran. It is also alleged in the complaint that he enquired regarding the assessment of the property tax with the deceased appellant. The deceased appellant said to have informed him to bring the connected records with them along with the application. On the same date, it is claimed that PW2 submitted an application along with the connected records with the deceased appellant and the deceased appellant asked him to come two days later. In the light of the submission of the learned counsel for the appellant that the deceased appellant was on casual leave on 04.07.2005, we have to find out from the evidence of PW6 as to whether the claim made by PW2 or the learned counsel for the appellant is true.

17.PW6 was working as a Junior Assistant in Chinnavedampatti, Panchayat office during February 2003. He was examined by the Investigation Officer. During the course of investigation in this case, he was handed over Rs.278/- from the amount recovered from the deceased appellant towards the property tax. During the course of his cross examination, he stated that as per Ex.P9 attendance register, the deceased appellant was on casual leave on 04.07.2005. Preceding two days i.e.,2nd and 3rd July 2005 were Saturday and Sunday and therefore, the deceased appellant came to office only on 5th July 2005. There is no material available to show that the deceased appellant attended office on 04.07.2005. Ex.P9 attendance register also shows that the deceased appellant was on casual leave on 04.07.2005. In the light of Ex.P9 and the evidence of PW6, it can be concluded without any doubt that the deceased appellant was on casual leave on 04.07.2005 and he did not attend the office on 04.07.2005. That be the case, the allegations made in Ex.P5 complaint, the evidence given by PW2 that he visited Chinnavedampatti Panchayat office on 04.07.2005, met the deceased appellant and handed over the application along with the relevant documents could not have been true.

18. The case of the prosecution as seen from Ex.P5 complaint and through the oral evidence of PW2 is that the first demand of illegal gratification was made on 19.07.2005, followed by reiteration of demand of illegal gratification on 21.07.2005 and 22.07.2005. It is stated in the complaint that when PW2 met the deceased appellant on 19.07.2005, the deceased appellant said to have informed him that the job is over and directed him to bring the property tax amount along with the money payable to him. It is to be noted that there is no specific mentioning about what is the quantum of money demanded by the deceased appellant on 19.07.2005. Only during the course of his evidence, he stated that the deceased appellant demanded to bring Rs.500/- towards the property tax and the bribe amount.

He met the deceased appellant on 21.07.2005, the deceased appellant asked him whether he brought the money and when he responded positively, the deceased appellant prepared a receipt for Rs.275/- and gave the receipt. On seeing the receipt, he paid Rs.275/- to the deceased appellant. After receiving Rs.275/-, the deceased appellant said to have asked him what had happened to the money due to him. When PW2 asked him how much money he needs, the deceased appellant said to have demanded Rs.225/- for him and Rs.275/- towards property tax, totally a sum of Rs.500/-. When PW2 told him that he had no money, the deceased appellant said to have snatched the receipt from PW2 and asked him to bring Rs.500/- and get the receipt.

19. It is seen from the complaint that only on 21.07.2005, the deceased appellant said to have informed the quantum of bribe amount as Rs.225/-. In PW2's evidence there is an improvement that the deceased appellant demanded Rs.500/- towards the property tax and bribe amount. He more or less confirms to the allegations made in the complaint with regard to the events that had happened on 21.07.2005 in chief examination. However, during the course of his cross examination, he stated that he met the deceased appellant several times prior to 19.07.2005. Only on 19.07.2005, the deceased appellant said to have claimed property tax amount with the bribe amount. When he met the deceased appellant prior to 19.07.2005, the deceased appellant had not asked him the property tax and the bribe amount. He admitted that there is no reference in the complaint as to the quantum of the bribe amount demanded by the deceased appellant. He also stated that he met the deceased appellant on 20.07.2005 with Rs.500/- and the deceased appellant informed him that the file is pending for approval of the executive officer. It is evident that on 20.07.2005, the deceased appellant had not demanded any money from him and he asked PW2 to come on 21.07.2005. It is his specific evidence that he has not clarified with the deceased appellant as to the quantum of property tax amount and quantum of bribe amount. He stated that he had Rs.500/- on 21.07.2005, but claimed that he paid only Rs.275/- to the deceased appellant. Thus, it is clear from the evidence that till 20.07.2005 neither deceased appellant had told about the quantum of bribe amount nor PW2 enquired about the quantum of tax and bribe amount with the deceased appellant.

20.It is seen from the property tax receipt that the property tax was Rs.278/- and not Rs.275/-. It is explained in PW2's evidence that initially he mistook the property tax as Rs.275/- and only after seeing the carbon copy of the property tax receipt, he realized that the property tax was Rs.278/-.

Therefore, it was wrongly given in the complaint that the property tax amount is Rs.275/-. This explanation is perplexing for the reasons that only after seeing the receipt PW2 gave Ex.P5 complaint. After knowing that the property tax is Rs.278/-, mentioning the property tax as Rs.275/- in the complaint is not correct. It may also be a genuine mistake. When it is cumulatively assessed with the other evidence in this case, this discrepancy assumes importance.

21.The course of cross examination of PW2 shows that when PW2 came to pay the property tax amount on 21.07.2005, he picked up a quarrel with the deceased appellant stating that the property tax fixed at Rs.278/- is high and asked him to reduce the property tax to Rs.100/-. When the deceased appellant told him that the property tax was correctly assessed and it is not possible to reduce the property tax, PW2 threatened that he would inform the Panchayat President and get the property tax reduced. Deceased appellant said to told PW2 that he can take up the matter to with any one, but the property tax could not be reduced from Rs.278/-. Only after that, PW2 said to have handed over Rs.275/-. On finding that it is short of Rs.3/, deceased appellant said to have returned the amount and snatched the property tax receipt and directed him to pay the correct amount and get the tax receipt.

22.It is also the case of the deceased appellant that since the receipt was already prepared, he paid a sum of Rs.278/- from his money. Ex.P3 receipt also shows that the receipt was prepared on 21.07.2005. PW5, the Bill Collector also informed that the bill was prepared on 21.07.2005. PW6 confirms that a sum of Rs.278/- was paid in the bank on 21.07.2005 itself. The trap laying officer handed over Rs.278/- out of Rs.500/- seized from the deceased appellant. It is made clear that a sum of Rs.278/- towards property tax of PW2's house was remitted in the bank on the date of preparation of receipt i.e. on 21.07.2005. It is also made clear from the evidence of PW2 that there was an incident with regard to the payment of amount on 21.07.2005 and snatching of the receipt by the deceased appellant. The case of the prosecution is that the deceased appellant snatched the receipt for not paying the bribe amount of Rs.225/- and on the other hand, the case of the appellant is that the deceased appellant snatched the receipt for the reason that there was altercation with regard to the reduction of property tax and that PW2 had not paid the exact amount of Rs.278/-, therefore, the receipt was snatched by the deceased appellant. Only one of these two projections could be true.

23.We have seen from the evidence of PW2 that he met the deceased appellant in his office on 04.07.2005, enquired about the property tax assessment procedure and on the same date submitted an application along with the documents on being informed by the deceased appellant. It was already found that the deceased appellant was on casual leave on 04.07.2005 and therefore, the aforesaid incident alleged to have been happened between the deceased appellant and PW2 could not have been happened and the evidence of PW2 in this regard is not true and cannot be accepted. It is also the evidence of PW2 that prior to 19.07.2005, the deceased appellant had not demanded any bribe amount. Even on 19.07.2005, he had not informed him about the quantum of property tax amount and the quantum of the bribe amount. Even on 20.07.2005, the deceased appellant had not demanded any amount and PW2 had also not clarified about the quantum of the property tax and bribe amount. Even as per the admitted case of PW2, there was an incident involving snatching of receipt by the deceased appellant on 21.07.2005. It is the case of the deceased appellant that since the deceased appellant refused to consider the request for reduction of property tax and that he snatched the property tax receipt from PW2 in the presence of others, PW2 felt insulted, got annoyed and gave false complaint against him. This explanation in the light of the evidence discussed above, in the considered view of this Court is a probable and plausible explanation for the reason that nobody who faced a similar situation like the deceased appellant, would demand bribe after picking up quarrel/altercation with regard to the reduction of the property tax and the subsequent incident of snatching the receipt.

24.Admittedly, there is no corroborative evidence with regard to the alleged demand made on 19.07.2005 and 21.07.2005. Though PW3 supports the evidence of PW2 with regard to the demand of bribe amount on 22.07.2005, evidence of PW3 seems artificial. It is his evidence that on seeing PW2 on 22.07.2005, deceased appellant said to have asked PW2 as to whether he brought the sum of Rs.275/- towards the property tax and a sum of Rs.225/- towards illegal gratification, totally a sum of Rs.500/-. Even PW.2 has not given the details given by PW.3 with regard to the quantum of tax amount and bribe amount. He just said that appellant asked him whether he brought Rs.500/- towards tax amount and bribe amount. Nobody would ask specifically the tax amount Rs.275/-, bribe amount of Rs.225/-. We can understand a person asking as to whether he brought the tax amount and the bribe amount, without actually specifying the quantum of the tax amount and bribe amount. Therefore, this evidence of PW.3 is artificial and shows that he desperately intended to support the case of the prosecution. Actually the tax amount is not Rs.275/-, but Rs.278/-. PW3's evidence is given not in the normal course of human conduct, but it is an exaggerated and artificial evidence and it has to be looked upon with suspicion.

25.One another aspect in this case is that a sum of Rs.500/- meant to be given towards property tax and bribe amount was recorded in Ex.P7 Entrustment Mahazar with its numbers and the same currency notes were recovered from the deceased appellant. After recovery, the duty of the trap laying officer is to submit the recovered amount intact to the Court. Strangely, the trap laying officer had chosen to give Rs.278/- to PW6 out of the total sum of Rs.500/- consisting of Rs.400/-(100x4), Rs.50/-(50x1), Rs.40/-(20x2) and Rs.10/-(5x2). Now the property shown in MO6 is only Rs.222/-. Admittedly, there was no two rupee coin entrusted to PW2 to record it in entrustment mahazar. Admittedly Rs.3/- out of Rs.278/- was not entrusted to PW2 for recording in the entrustment mahazar. The trap laying officer PW9 against the well established procedure of producing the property seized in the Court, on his own converted the denominations seized especially Rs.5/- as Rs.3+2 and showed only Rs.222/- as the case property. This is absolutely not correct and not in accordance with law. PW9 should have produced the money seized during the course of trap proceedings in the Court and sought Court's directions for the disposal of the property. The mode of disposal of seized currency notes, adopted by him during the course of trap proceedings also affects the credibility of the procedure adopted by him.

26.The deceased appellant accepted the recovery of Rs.500/-. As already stated, it is claimed that the deceased appellant received this money believing that PW2 paid Rs.278/- towards property tax, which was already paid by the deceased appellant to the Government through bank. Taking into account all the evidence available in this case, as discussed above, the probable, plausible and acceptable explanation offered by the appellant, this Court is of the considered view that the prosecution has failed to prove the demand of illegal gratification beyond all reasonable doubts and in the absence of proof of demand of illegal gratification, mere acceptance of money by the deceased appellant alone is not sufficient to prove the charges against the deceased appellant. In this view of the matter, this Court is of the considered view that the judgment of the trial Court has to be set aside. Thus, the points are answered in favour of the appellant.

27.For the reasons aforestated this Court set asides the judgment of the trial Court in in Special Case No.4 of 2011 by the learned Special Judge for Prevention of Corruption Act Cases, Coimbatore, convicting and sentencing the appellant for the offences under Sections Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and acquits him of the charges framed against him. The fine amount if any paid is ordered to be refunded to the appellant. Accordingly, this Criminal Appeal is allowed. Consequently, connected miscellaneous petition if any is also closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mra/sli
To

1. The Special Judge for Prevention of Corruption Act Cases, Coimbatore.

2. The Inspector of Police
Vigilance and Anti-Corruption
Coimbatore.
(Cr.No.13/AC/2005/CB)

3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.K.Krishnan, Advocate Sr.28971

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