BAIL SLIP

The Appellant/Accused Namely, A.Velmurugan, S/o.Arumagapillai M/54 years was directed to be released on bail by the order of this Court dated 23/04/2015 and made in Crl.MP.No.1 of 2015 in Crl.A.No.242 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 05.04.2022	Orders pronounced on 06.05.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.A.No.242 of 2015

A.Velmurugan ... Appellant/Accused A1

Vs.

State, rep.by
The Deputy Superintendent of Police,
Prevention of Corruption and
Vigilance Section,
Cuddalore,
Crime No.1 of 2002. ... Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to call for the records in Spl.Case No.13 of 2013, on the file of the Special Judge for Vigilance and Anti corruption cases, Villupuram, Villupuram District and set aside the conviction and judgment dated 31.03.2015.

For Appellant : Mr.S.Saravana Kumar

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

J U D G M E N T

This Criminal Appeal is filed to call for the records in Spl.Case No.13 of 2013, on the file of the

Special Judge for Vigilance and Anti corruption cases, Villupuram, Villupuram District and set aside the conviction and judgment dated 31.03.2015.

2.The final report is filed against the appellant A.Velmurugan and co-accused A.Perumal alleging that appellant A.Velmurugan is the first accused in this case and was working as Village Administrative Officer in V.Puthur Village. The second accused was the Village Assistant serving under the first accused and both of them are public servants as defined under Section 2 (c) of the Prevention of Corruption Act, 1988. On 28.12.2001, and on subsequent dates, lastly on 02.01.2002, appellant demanded from the defacto complainant Ramamurthy a sum of Rs.1,000/- as illegal gratification other than the legal remuneration and after negotiation, reduced the amount to Rs.600/- as a motive or reward for furnishing the extracts of Chitta, Adangal and Field map of defacto complainant's land, for the purpose of getting bank loan for laying water pipe line. Using his position as a public servant, he demanded the aforesaid amount, accepted or obtained an advance of Rs.100/-. In the course of the same transaction, on the basis of the complaint by Ramamurthy, a trap was arranged on 03.01.2002, at about 9.45 a.m., Ramamurthy accompanied by the official witness Moorthy, called on the appellant in his office room in V.Puthur. Second accused intentionally aided appellant in reiterating the demand for illegal gratification and then appellant accepted the balance bribe amount of Rs.500/- from Ramamurthy and entrusted the money to the second accused. Therefore, appellant committed the offences punishable under sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The second accused committed offences under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and Section 109 IPC. Accordingly, charges were framed against the accused. The accused denied the charges and demanded trial.

3.Prosecution examined PW1 to PW14 witnesses, produced Exs.P1 to P22 and MO1 to MO8 in support of its case. Appellant has not produced any evidence.

4.The case of the prosecution as seen from the evidence of the prosecution witnesses, in brief, is as follows:

PW2 and his brother own 4 acres of land in V.Puthur village. Water has to be taken from S.No.26 to S.No.26/AF. He arranged to get loan for laying pipeline through Manampoondi agricultural office. Agricultural officer informed him that Chitta and adangal extracts are necessary for applying loan. He gave a petition to the Tahsildar, Thirukovilur on 28.12.2001, seeking the extracts of these documents. His application is Ex.P2. The Tahsildar directed him to meet the Village Administrative Officer of V.Puthur Village for getting the documents. On the same date, he met the appellant at V.Puthur village administrative office. Appellant asked him as to how much subsidy he would get. PW2 told him that he would get subsidy of Rs.7,000/-. Then appellant asked him to give Rs.1,000/- from the subsidy amount of Rs.7,000/-. PW2 told him that he cannot give Rs.1000/-. Appellant asked him to come next day. Next day, i.e. On 29.12.2001, PW2 met the appellant in his office at 9 a.m. and requested him the documents. Appellant told him that only if PW2 pays him money, he would attend to his request. Finally, he demanded Rs.600/-. PW2 had only Rs.100/- with him and gave it to the appellant and told him that he would give Rs.500/- when collecting the documents. He again met him on 02.01.2002. Appellant told him that he would give documents on 03.01.2002 and asked him to bring the balance amount. Since PW2 did not want to give bribe, he lodged Ex.P3 complaint. PW12 trap laying officer, on receiving Ex.P3 complaint, registered Ex.P11 FIR, arranged for witnesses. On 03.01.2002 at about 6 a.m. PW2 and witnesses came to the office of the Vigilance and Anti Corruption Police. Witnesses were given copy of the FIR to understand the facts of the case. A sum of Rs.500/- produced by PW2 was received and Sodium Carbonate Phenolphthalein test was conducted in the presence of PW2 and witnesses, for them to understand the importance of the test. Currency notes are MO1 series, Ex.P4 Entrustment Mahazar was prepared and then he directed PW2 to inform him through a pre-arranged signal if the accused receives the bribe amount. Accordingly, PW2 had signaled him with the pre-arranged signal.

5.Then they started to appellant's office at about 8 a.m. PW2 and PW3 met the appellant in his office at 9 a.m. and requested him for the documents. Appellant asked him whether the money is ready. PW2 told him money is ready and handed over Rs.500/- to appellant. Appellant received the money and handed over to the second accused A.Perumal. Then he gave the documents. After coming out of the office, PW2 signaled to PW12 with the prearranged signal. PW12 and other police officials came there immediately and he explained to the Inspector about what had happened inside the office. He identified the appellant and the co-accused A.Perumal.

6.PW12 introduced him and his team members to the appellant. He prepared Sodium Carbonate solution and directed the appellant to dip his right hand fingers. On dipping, the solution turned to light red colour. Another Sodium Carbonate solution was prepared and the appellant was asked to dip his left hand fingers. On dipping, the solution changed to light red colour. Two Sodium Carbonate solution were prepared and he directed the other accused Perumal to dip his right and left hand fingers. After dipping, both solutions turned to light red colour. When enquired about the bribe amount, accused Perumal took money from his purse and handed over. When the purse was subjected to Sodium Carbonate Phenolphthalein test, there was no change in colour. Currency notes numbers tallied with the numbers in the entrustment mahazar. PW12 prepared Ex.P5 recovery mahazar and Ex.P15 rough sketch. Seized Ex.P16 application of PW2 along with records. Appellant's house was searched and no incriminating material was seized from his house. PW3 trap witness corroborated the evidence of PW2 with regard to the pre-trap proceedings and the trap proceedings also corroborated with PW12 with regard to the trap proceedings.

7.PW9 the Assistant Director of Forensic Science department received item nos.1 to 5 sealed bottles containing solutions used for conducting sodium carbonate - phenolphthalein test for the right and left hand fingers of the appellant and second accused A.Perumal and the money purse of the second accused A.Perumal. Examination shows the presence of Sodium Carbonate and Phenolphthalein in all the five items. PW13 took up investigation in this case, recorded the statement of the witnesses, seized the relevant documents. PW14 completed investigation and filed final report against the accused.

8.On the basis of the oral and documentary evidence, the trial Court found that the charges against the second accused Perumal were not proved and thus, acquitted him under Section 248(1) Cr.P.C. At the same time, appellant/first accused was found guilty under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, convicted and sentenced him to under go one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to pay the fine, to undergo three months simple imprisonment under Section 7 of Prevention of Corruption Act, 1988 and one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to pay the fine, to undergo three months simple imprisonment under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The substantive sentences are ordered to run concurrently. Questioning and challenging the judgment of the trial Court, this appeal is filed.

9.The learned counsel for the appellant submitted that PW10 gave evidence with regard to the procedures for applying FMB Sketch and that was corroborated by PW5 and PW7. They have given evidence as to the procedures to be followed while applying for the extracts of the revenue records and FMB Sketch. However, PW2 had not followed any of the procedures, especially, he has not paid Rs.10/- in the treasury and submitted the receipt. His application was not processed for the reason that he has not applied with the requisite fee. The evidence of PW5, PW7 and PW10 is also corroborated by PW6. Till 31.12.2001, PW2's application was in circulation in the office and was not handed over to the appellant. Therefore, appellant had no opportunity to deal with the application submitted by PW2. There is a contradiction in the evidence of PW2 with regard to the dates of the alleged demand. There is no investigation with regard to the alleged demand of Rs.1000/- by PW2. There is absolutely no evidence to prove the case of the prosecution that the appellant demanded illegal gratification from PW2. PW2 and PW3 contradict in their evidence with regard to the time of giving the bribe money to the appellant. There is also contradiction as to who handed over the money and to whom the money was handed over. When PW5 stated that he has not handed over the application given by PW2, PW2 stated that PW5 handed over the application to him with a direction to give it to the Village Administrative Officer. Mere recovery of money without proof of demand is not enough to prove the charges. When the second accused was acquitted on the ground that charges are not proved against him, the appellant should also have been acquitted on the principles of parity, especially, when the amount was not recovered from the appellant. Therefore, the learned counsel for the appellant submitted that the trial Court without considering the evidence in proper perspective, especially, the apparent and material contradictions in the evidence of the material witnesses, wrongly convicted and sentenced the appellant and prayed for setting aside the judgment of the trial Court and for acquitting the appellant.

10.The learned Additional Public Prosecutor submitted that the demand of bribe amount prior to trap proceedings was clearly spoken by PW2. The demand of bribe money on the date of trap, its acceptance and recovery had been clearly spoken by PW2 and PW3. The recovery of bribe amount from second accused was spoken by PW3 and PW12. The second accused was not aware of the demand of illegal gratification by the appellant and therefore, he was acquitted. However, there is a clear evidence against the appellant for demanding and accepting the bribe amount. Therefore, the appellant cannot claim parity with the second accused. The trial Court rightly convicted and sentenced the appellant and thus, the learned Additional Public Prosecutor prayed for dismissal of this Appeal.

11.Considered the rival submissions and perused the records.

12.Points for consideration:

1.Whether the prosecution has failed to prove the demand of illegal gratification and its acceptance by the appellant?

2.Whether the judgment of the trial Court is liable to be set aside in the light of the grounds taken by the learned counsel for the appellant?

13.As narrated above, the appellant and second accused A.Perumal, who are Village Administrative Officer and Village Assistant of V.Puthur Village respectively said to have demanded a sum of Rs.1000/- as illegal gratification for granting the extracts of Chitta, Adangal and FMB to PW2 and then the amount was reduced to Rs.600/-. Advance amount of Rs.100/- was received and then when the balance amount of Rs.500/- was demanded and accepted by the accused, they were apprehended red handed. The trial Court found that the charges against the second accused Perumal were not proved and acquitted him, convicted the appellant/first accused for the offences under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

14.One of the main contentions of the learned counsel for the appellant is that PW2 has enmity against the appellant in connection with furnishing the death certificate of PW2's father. Keeping that enmity in mind, he gave a false complaint against the appellant. Contradictions in the evidence of PW2 himself in the complaint and during his examination in chief and cross examination with regard to the demand of bribe, date on which the demand was made etc., would amply prove that PW2 is not telling the truth. It was also submitted that till 31.12.2001, PW2's application and connected papers had not come to the table of appellant, as evidenced from the evidence of PW6, for the reason that PW2 had not paid the requisite amount and filed the challan. That be the case, the alleged demand made by the appellant on 28.12.2001 and on subsequent dates are totally false. It is reiterated again and again by the learned counsel for the appellant that there is a contradiction in the evidence PW2 in his chief and cross examination and also in the allegations made in the complaint. In order to appreciate the contentions of the learned counsel for the appellant, this Court proposed to examine in detail the evidence of PW2 and other witnesses with regard to the demand of bribe, its acceptance and the recovery.

15.Ex.P3 is the complaint which set the criminal proceedings against Appellant in motion. The gist of the complaint is that PW2 applied for Chitta, Adangal and FMB Sketch extracts of the land in S.No.25/7A and 26/2A with the Deputy Tahsildar on 28.12.2001. After receiving the application, the Deputy Tahsildar told him to meet the appellant, Village Administrative Officer of V.Puthur Village and get the documents. When he met the appellant and asked him about the records, appellant said to have demanded Rs.1,000/-. When he expressed his inability to pay Rs.1,000/-, appellant told him that PW2 would get Rs.7000/- as subsidy, why can't he pay Rs.1000/- from the subsidy amount. Then the amount was reduced to Rs.600/-, after negotiation. It is further stated in the complaint that PW2 met the appellant two or three times in connection with the documents and the appellant told him that only after PW2 pay the advance, he would place his pen on the paper. Therefore, PW2 paid a sum of Rs.100/- as advance and told the appellant that he would pay Rs.500/- when the documents are delivered. When he visited the appellant again on 02.01.2002, appellant again demanded Rs.500/- and then he would give the documents. Therefore he gave the complaint.

16.The complaint allegations shows that the first demand was made on 28.12.2001, subsequently it is alleged that PW2 met the appellant two or three times. But the dates of meeting are not mentioned in the complaint. In these two or three meetings, it appears that he claimed to have paid Rs.100/- as advance. Then on 02.01.2002, appellant reiterated his demand for Rs.500/-. During the course of PW2's chief examination, he stated that he submitted his application on 28.12.2001 to the Tahsildar and then met the appellant on the same date. It is his evidence that the appellant asked him as to how much subsidy PW2 would get. This contradicts with the allegations made in the complaint. In the complaint, it was stated that it was the appellant who informed PW2 that PW2 would get Rs.7,000/- as subsidy and he demanded Rs.1000/- from the subsidy amount. However, in chief examination, he stated that appellant asked him about the subsidy that would be payable to PW2 and from that subsidy, he said to have demanded Rs.1000/-. When he expressed that he cannot part with Rs.1000/-, appellant said to have asked him to come next day. As directed, he met the appellant on 29.12.2001 and negotiated the bribe amount and reduced to Rs.600/- and paid Rs.100/- as advance. This is again a contrary evidence than what is stated in the complaint. It is stated in the complaint that bribe amount was reduced to Rs.600/- from Rs.1000/- after negotiation on 28.12.2001 itself. The date of payment of advance was not mentioned in the complaint. It is stated in his chief examination that has paid an advance of Rs.100/- on 29.12.2001. He further stated in his chief examination that when he met the appellant on 02.01.2002, he told him that he would give the document on 03.01.2002 and asked him to bring the balance amount. However, in the complaint it is stated that the appellant said to have demanded Rs.500/- on 02.01.2002 and after paying the amount, he would deliver the documents. It is not specifically mentioned that the appellant would give the documents on 03.01.2002.

17.During the course of cross examination, PW2 stated that he met the appellant four times i.e., first time when he gave the application, second time, the next day after giving application, third time, when he met the appellant along with PW3 and police. As per his evidence, he gave the details of his meeting with the appellant only three times and not four times. It is his evidence that he did not give the statement to the police that he negotiated the bribe amount on the first day. It is also his evidence that he did not give statement to the police that after informing his position, appellant reduced the bribe amount to Rs.600/- and then he visited VAO office two or three times in connection with documents. This evidence is in direct contrast with the complaint allegations and his evidence in chief examination. Further he stated that he had not informed the police that on 31.12.2001, he met the appellant, appellant demanded money from him, since he had only Rs.100/- appellant received Rs.100/- and told PW2 bring the balance Rs.500/- when appellant delivers the documents. The prosecution case is that on 03.01.2002, PW2 paid a sum of Rs.500/- to the accused, but he stated during the course of cross examination that he did not pay any money to the first accused (appellant) on the morning of 03.01.2002. Thus, it is clear from the evidence of PW2 that he contradicts in his evidence in chief examination and cross examination, not only the allegations made in the complaint, but also his evidence in chief examination and cross examination with regard to date/dates of demand. It is the settled proposition of law that proof of demand is sine qua non for proving the charges against the accused under Section 7 of Prevention of Corruption Act. As narrated above, there are serious contradictions in the evidence of PW2 with regard to the date of the alleged demand made by the appellant.

18.Next important point that brought to the notice to the Court is that when PW2 claimed in his complaint and in chief examination that he submitted that the application to the Tahsildar, he claimed during the course of cross examination that the Tahsildar after receiving Ex.P2 application, initialed in it and then returned it to him and asked him to give it to the Village Administrative Officer. When a suggestion was put to him by the appellant/accused that the Deputy

Tahsildar has not returned the application to him, it was denied by PW2. He reiterates that Ex.P2 application was handed over by him to the appellant, however, Tahsildar who received Ex.P2 application was examined as PW5. It is his evidence that on 28.12.2001, PW2 gave an application for the extracts of Chitta, Adangal and FMB Sketch. After receiving the application, he forwarded the application to 'F' section and informed PW2 that he can meet the concerned Village Administrative Officer and he would send the original application to the Village Administrative Officer. It is clear from the evidence of PW5 that he had not handed over Ex.P2 application to PW2, but forwarded to F section for being forwarded to the appellant through official channel. Therefore, the evidence of PW2 that PW5 handed over Ex.P2 application to him and he, in turn, handed over Ex.P2 application to appellant is obviously not correct and true.

19.It is also seen from the evidence of PW5 that if PW2 wants FMB sketch, he would have to pay Rs.10/-in bank and give the receipt. However, PW2 had not paid Rs.10/- to the bank for getting FMB Sketch. PW7 was a Junior draughtsman in Thirukovilur Taluk office. Ex.P2 application submitted by PW2 was sent to 'F' section. One Selvaraj, Senior Draughtsman working in the same section died of illness on 31.12.2001. After his death, PW7 was looking after 'F' section under oral instruction. Ex.P2 application was entered in the concerned register on 31.12.2001. PW2 was informed about the charges for getting extract of FMB and it should be paid in State Bank of India and challan should be produced. However, PW2 did not produce the challan and therefore, no action was taken on his application. From the evidence of PWs 5 and 7, it is clear that PW2 had not paid the requisite amount in the bank and produced the challan for preparing the copies of the documents required by him.

20.Yet another vital contradiction brought to the notice of this Court is with regard to the supply of copies of documents to PW2. Perusal of PW2's evidence shows that after paying bribe amount of Rs.500/- on 03.01.2002, appellant gave the copies of documents required by him. PW3's evidence shows that after paying the amount of Rs.500/- PW2 did not ask for the documents, he left the place after paying the money. It is his further evidence that he did not know whether the documents were given to PW2 on the date of trap. Appellant did not say in his presence that he would deliver the documents only if PW2 pays money. PW12 stated that the application of PW2 along with the copies of the documents required by him is in Ex.P16 file. It is seen from his evidence that he seized Ex.P16 file from the appellant. However, during the course of his cross examination, he has stated that he did not recover the documents claimed by PW2 from the appellant. It is also his evidence that PW2 did not say anything about receiving the documents from the appellant after paying the money. He had also not conducted any investigation in this aspect. Obviously, there is material contradiction in the evidence of PW2, PW3 and PW12 with regard to the recovery of Ex.P16 file. If PW2 had received the documents from the appellant, how come Ex.P16 file with documents were recovered from the office of the appellant.

21.These vital contradictions along with the vital contradictions in the evidence of PW2 and PW3 with regard to the demand of bribe creates a serious suspicion in the very foundation of the prosecution's case. Unless the demand of illegal gratification is satisfactorily proved, mere possession and recovery of currency notes from the accused will not bring home the charges under Section 7 of Prevention of Corruption Act, 1988. It is held in the judgment reported in (2014) 13 SCC 55 B.Jayaraj Vs. State of Andhra Pradesh that,

> 7. In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused

> voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M.Sharma V. State of A.P. And C.M. Girish Babu V.CBI.

22.It is seen from Ex.P17 that PW2 paid a sum of Rs.50/- towards tax, but he denied paying the amount on 03.01.2002. It is his evidence that he did not inform the police that he gave the bribe money to the appellant and the appellant gave it to the second accused. It is again a contrary evidence to the prosecution case. Though it is proved from the evidence of PW2, PW3 and PW12 that a sum of Rs.500/- was recovered from the accused Perumal, Perumal was acquitted by the trial Court. Prosecution has not preferred any appeal against the acquittal order against accused Perumal. Appellant and Perumal when tested for the presence of Phenolphthalein in their right and left hand fingers tested positive for its presence. However, it is a fundamental tenet, especially in cases based on trap, the proof of demand of bribe is sine qua non for establishing the charge under Section 7 of Prevention of Corruption Act. In view of the material contradictions in the evidence, the aforesaid prosecution witness, especially PW2 defacto complainant, this Court is of the view that the demand of illegal gratification by the appellant is not satisfactorily proved by the prosecution. On the other hand, from the way PW2 gave false evidence shows that he wanted to fix and frame the accused in this case some how and therefore, his evidence cannot be believed at all. When the demand is not satisfactorily proved, presumption cannot be drawn under Section 20 and therefore, we cannot presume that the appellant received Rs.500/- as illegal gratification.

23.In this view of the matter, this Court finds that the judgment of the trial Court convicting and sentencing the appellant for offences under sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and sentence imposed thereon are liable to be set aside and accordingly set aside. The appellant is not found guilty of the charges framed against him under sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and is acquitted from the charges. The fine amount, if any, paid by the appellant is ordered to be returned to the appellant. Consequently, connected miscellaneous petition if any is also closed.

-s/d-
Assistant Registrar(CS-II)

\\ True Copy \\

Sub-Assistant Registrar

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To

1. The Special Judge for Vigilance
and Anti corruption cases,
Villupuram.

2.The Chief Judicial Magistrate,
Villupuram.

3.The Deputy Superintendent of Police,
Prevention of Corruption and
Vigilance Section,
Cuddalore.

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

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.242 of 2015

NR(CO)
GN(26/05/2022)