Bail Slip

The Appellant / Accused viz, G.Sengamalam, S/O.R.Ganesan was directed to be released on Bail as per order of this court, dated 17.06.2016 and made in Crl.M.P.No.5571 of 2016 in Crl.A.No.365 of 2016 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.365 of 2016

G. Sengamalam .. Appellant / Accused

Vs

State rep. By
Inspector of Police,
Vigilance and Anti Corruption
Chennai City-I Detachment,
Chennai 28
Crime No.2/A.C./2006 .. Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment dated 28.04.2016 made in Special Case No.2/2008 on the file of Special Judge cum Chief Judicial Magistrate, Chengalpattu.

For Appellant : Mr. V. Ramamurthy,
for Mr.Radha Pandian

For Respondent : Mr. C.E. Pratap,
Government Advocate (crl.side)

JUDGEMENT

The appellant is the sole accused in S.C.No.2 of 2008 on the file of Special Judge cum Chief Judicial Magistrate, Chengalpattu. He stood charged for the offences under Sections 7 & 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988.

2. By a judgment dated 28.04.2016, the trial Court, convicted and sentenced the appellant as detailed below:-

Section of law	Sentence
7 of Prevention of Corruption Act 1988	Simple imprisonment for three years and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months .
13(1)(d) r/w. 13(2) of Prevention of Corruption Act 1988	Simple imprisonment for four years and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months .

The trial Court has ordered the above sentences to run concurrently.

3. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

4. The case of the prosecution is that, P.W.2 is the owner of a TATA Indica Car. P.W.4 is his driver. On 30.05.2006, P.W.2's car has met with an accident dashing against another car, and heavily damaged. Hence, P.W.2 and the other offending car owner have given two separate complaints. Thereafter, both the car owners compromised between themselves that they will claim compensation from the Insurance Company. For that purpose, they required a Insurance Claim Certificate from the police. On 02.06.2006, P.W.4, went to the Police Station, where, the accused, Head Constable, Grade-I, demanded a sum of Rs.2,000/- as bribe for issuing the Insurance Claim Certificate. Immediately, P.W.4 called P.W.2, and informed the same and also handed over the phone to the accused. Then P.W.2, talked to the accused and the accused agreed to reduce the amount to Rs.1000/-as bribe. Not willing to give the bribe, on the same day, at about 2.15 p.m., both P.W.2 and P.W.4, went to the respondent police, and, he lodged a complaint. Based on the complaint (Ex.P.2), First Information Report (Ex.P.3) was registered and a trap was arranged with a shadow witness, P.W.3. Then both P.W.2 and P.W.3 went to the police station with the phenolphthalein coated money. At that time, the accused was not there and hence, they called the accused over mobile phone and asked him to come to police station at about 7.00 p.m. The accused came there and took P.Ws.2 and 3 to the room, which was used by them to take rest, and he handed over the certificate. Thereafter, the accused asked about the bribe money, P.W.2, handed over the money to the accused and he kept the amount in his pant pocket. Immediately, the trap laying team, went inside and the petitioner was caught red handed and the money was

recovered from the accused. Thereafter, phenolphthalein test was conducted, which turn positive. After completing all the legal formalities, the accused was arrested. After completion of investigation, final report has been filed. Hence, the charge.

5. Based on the above materials, the trial Court framed charges, as detailed in the first paragraph of this judgment, against the accused. The accused denied the same.

6. In order to prove the case, on the side of the prosecution, as many as 11 witnesses were examined and 10 documents were exhibited and produced 5 material objects.

7. Out of the witnesses examined, P.W.1 is the Sanctioning Authority and he has granted sanction for prosecution. P.W.2 is the defacto complainant. According to him, the accused has demanded a sum of Rs.1000/- as bribe for issuing the Insurance Claim Certificate and hence, he lodged a complaint. Based on that, a trap was arranged and while he handed over the money, the accused was caught red handed. P.W.3 is the shadow witness. He accompanied P.W.2 and he has also spoken about the handing over of money to the accused. P.W.4 is a driver of P.W.2, to whom, the original demand was made. However, he turned hostile. P.W.5 is the writer in the concerned police station. He has registered the original complaint in CSR No.286 of 2006 in respect of accident. P.W.6 is the Head Constable. He has prepared the Insurance Claim Certificate. P.W.7 is the Inspector of Police, who signed in the Insurance Claim Certificate (Ex.P.5). P.W.8 is the Scientific Officer working in the Forensic Lab, Chennai, conducted phenolphthalein test and given a report Ex.P.8. P.W.9 is the Inspector, who registered the complaint and conducted trap. P.W.10 is the investigating officer, who has conducted investigation and handed over the same for further investigation to P.W.11, Inspector, he has conducted further investigation and filed a final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness nor mark any documents on his side.

9. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court with this Appeal.

10. The learned counsel appearing for the appellant submitted that, the prosecution has failed to prove the demand

and acceptance. As per the prosecution, the original demand was made to P.W.4, driver of P.W.2. Thereafter, P.W.2 talked to the accused, where he demanded bribe. and given a complaint. However, P.W.4, from whom the original demand said to be made turned hostile and the mobile phone, through which, P.W.2 talked with the accused was not seized, and no call details have been recovered and marked before the Courts. That apart, P.W.2, admitted in the cross examination that he was not able to confirm the person to whom he had talked. Hence, the demand was not properly proved by the prosecution. So far as the acceptance is concerned, P.W.3, the shadow witness, said to have accompanied P.W.2, in the cross examination, he had admitted that he did not go inside the police station. It is P.W.2, alone went there and handed over the money. Even, from the evidence of P.W.2, the accused has handed over the certificate to P.W.2, thereafter, he said to have demanded the bribe. It probablize the case of the accused that the money has been forcibly inserted in the pant pocket of the accused.

11. The learned counsel further submitted that, since the demand was not proved by the prosecution, based on the recovery alone, the petitioner cannot prosecuted, and the presumption under Section 20 of the Act will not come into play. He further submitted that, there is also serious doubt regarding the registration of the First Information Report. According to P.W.9, the complaint has been given at 10.30. a.m., on 02.06.2006, where as Ex.P.3, First Information Report was registered at 2.45 p.m.,which also creates a doubt about the genuineness of the complaint given by the petitioner. The trial Court, without considering all those facts, erroneously convicted the appellant.

12. Per contra, the learned Government Advocate (crl.side) appearing for the respondent submitted that the evidence available on record clinchingly shows that it is only the appellant prepared the Insurance Claim Certificate and for that, he demanded bribe. Even though P.W.4, turned hostile, from the evidence of P.W.2, it is proved that the accused made a demand through P.W.2. Thereafter, the trap was arranged and he was caught red handed, phenolphthalein test also proved positive. There is no plausible explanation on the accused regarding the recovery. As the prosecution has clearly proved the demand and recovery, the presumption under Section 20 of the Act will come into play and absolutely, there is no materials to rebut the presumption in this case. Considering all those circumstances, the trial Court rightly convicted the accused and there is no reason to interfere with the well considered judgment of the Trial Court.

13. This Court considered the submissions made on either

side and perused the materials available on records carefully.

14. The primordial contention of the learned counsel appearing for the appellant is that the prosecution has failed to prove the demand, and in the absence of any proof for demand, the appellant cannot be convicted based on recovery alone. According to the prosecution to issue an Insurance Claim Certificate, the accused demanded bribe from P.W.4, the driver of P.W.2. However, P.W.4 turned hostile. From the evidence of P.W.2, it is admitted that originally, the demand was made to P.W.4 at the police station, in turn, P.W.4 called P.W.2 and informed the same through mobile phone and in turn, P.W.2 talked to the accused from the mobile phone of P.W.4, where the accused reduced the bribe amount to Rs.1000/- and demanded him to pay the same. Admittedly, the demand was not made in person to P.W.2 and the demand was made only through the mobile phone of P.W.4. As rightly contended by the learned counsel for the appellant, the alleged mobile phone was not seized by the police and call details record was not collected and produced order before the Court to show that P.W.2, has talked with the accused. That apart, in the cross examination, P.W.2 has clearly admitted that, while he met the accused in person at the police station, earlier, he did not made any demand. Only through the mobile phone of P.W.4, he made a demand and he further stated that he is not able to confirm that only this accused has talked to him over mobile phone. P.W.2 further admitted in the cross examination that while handing over the Insurance Claim Certificate, he has not made any demand, further he confirmed that he was very sure that it is only this accused has demanded the bribe through phone. In the chief examination, P.W.4 also did not say anything about the accused. He simply says that some police men has demanded money from him. He did not specifically mentioned about the demand.

15. Considering those circumstances, this Court is of the considered view that the prosecution has not proved the demand of bribe amount. Even assuming that the bribe amount has been accepted by the accused during the recovery, in the absence of any proof for demand of illegal gratification mere recovery is not sufficient to convict the accused.

16. That apart, in respect of presumption under Section 20 of the Act, the presumption could be drawn on the proof of the acceptance of illegal gratification for doing or forbearing to do any official act and proof of acceptance of illegal gratification would follow only if there is a proof of demand. In the said circumstances, in the absence of any proof for demand, the presumption under Section 20 of the Act will not come into play. The Hon'ble Supreme Court in the case of I B. Jayaraj /vs/ State of Andhra Pradesh in CDJ 2014 SC 255 has

held as follows :

"8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ex.P.11) before L.W.9, an there is no other evidence to prove that the accused had made any demand, the evidence ofo P.W.1 and the contents of Ex.P.11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial Court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as 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.

9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any offficial act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case, the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent. "

17. Similar view was taken by the Hon'ble Supreme Court in 2016 (3) SCC 108 has held as follows:

> " It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(i)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of B.Jayaran (supra). A. Subair (supra) and P.Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant. the relevant paragraph 7 from B. Jayaraj case(supra) reads thus:
>
> > "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."

18. Considering all those circumstances, this Court is of the considered view that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. Without considering all those materials, the trial Court erroneously convicted the appellant/accused. Hence, the appellant is entitled for acquittal and the judgment of the court below is liable to be set aside.

19. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Special Judge cum Chief Judicial Magistrate, Chengalpattu in S.C.No.2 of 2008, by the judgment dated 28.04.2016, is hereby set aside, and the appellant is acquitted from all the charges levelled against him.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Special Judge cum Chief Judicial Magistrate,
   Chengalpattu .

2. The Inspector of Police,
   Vigilance and Anti Corruption
   Chennai City-I Detachment,
   Chennai 28

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent,
   Central Prison, Puzhal, Chennai.

Copy To:

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

+2cc to M/s.R.Radha Pandian, Advocate, S.R.No.5406

Crl.A.No.365 of 2016

PA(CO)
SB(01/03/2022)