



BALI SLIP

The Accused namely B.Vasudevan, S/o.Batcha Reddiyar was directed to be released on bail vide order dated 13.07.2016 made in Crl.M.P.No.7328 of 2016 in Crl.Appeal No.512 of 2016 passes by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2022

DELIVERED ON : 09.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.512 of 2016

B.Vasudevan

..Appellant/Accused

Vs.

State rep by
Inspector of Police,
SPE/CBI/ACB,
Chennai.

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of the learned Special Judge for CBI Cases, Puducherry in Spl.C.C.No.14 of 2010, dated 29.06.2016.

For Appellant : Mr.M.S.Govindarajan
for M/s.M.Shahjahan

For Respondent : Mr.K.Srinivasan,
Spl.P.P. (CBI)

J U D G M E N T

(The case has been heard through video conference)

The appellant is the sole accused in Spl.C.C.No.14 of 2010 on the file of the learned Special Judge for C.B.I. Cases, Puducherry. 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 29.06.2016, the trial Court convicted him under Sections 7 of the Act and sentenced him to undergo rigorous imprisonment for 3 years and pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for 6 months, further convicted him under



Section 13(2) r/w Section 13(1)(d) of the Act and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 6 months and further ordered that both the sentence shall run concurrently. Challenging the said conviction and sentence, the present appeal has been filed.

2. The case of the prosecution in brief is as follows:

(i) The appellant/accused, was working as Agricultural Officer in the office of Hydro-Geology, State Ground Water Unit and Soil Conversion, Agriculture Department, Thattanchavady, Puducherry. P.W.3/defacto complainant is an agriculturist and he obtained subsidy for digging bore well in his agricultural land.

(ii) Thereafter, for the purpose of installing submersible pump set in the bore well, he filed an application seeking for subsidy. The appellant who was working as Agricultural Officer and in-charge of dealing with subsidiary issues, demanded Rs.2,000/-as bribe for processing the subsidy application. As P.W.3 was not willing to give bribe, he decided to file a complaint before the respondent C.B.I. P.W.3 approached the C.B.I. officers who were present in the Pondicherry University Guest House, on 18.05.2010 and also lodged a complaint (Ex.P4).

(iii)Then, a trap was arranged, and appropriate preparations were made, the phenolphthalein coated money has been handed over to P.W.3, and he along with P.W.4, a shadow witness, gone to the office of the appellant, where appellant again demanded bribe money, P.W.3 handed over the bribe money and the appellant received the same and kept it in his pant pocket.

(iv)The CBI officials immediately went there and searched the appellant and recovered the money from him and conducted phenolphthalein test which proved positive. Thereafter, following the legal procedures properly and after completing other formalities like preparing of mahazar, the appellant was arrested. The respondents also obtained prior sanction from the competent authority for prosecuting the appellant. After completion of investigation, a final report has been filed before the Special Court and charges were framed against the appellant.

(v)In order to prove the case, the prosecution examined as many as 9 witnesses, exhibited 28 documents and 6 material objects. P.W.1 is the sanctioning authority, he spoke about the sanction granted by him for prosecuting the appellant. P.W.2 is the Scientific Officer from Forensic Lab, Chennai who spoke about the examination conducted by him on the samples sent by the respondent and found phenolphthalein and sodium carbonate



in the samples and spoke about the report filed by him.

(vi) P.W.3, is the defacto complainant, according to him, the appellant demanded Rs.2,000/- as bribe for sanctioning subsidy for submersible motor and thereafter gave a complaint to the respondent CBI. He also spoke about the demand and acceptance of bribe money, subsequent trap proceedings conducted by the respondents and also recovery of money from the accused. P.W.4 is the shadow witness, he also spoke about the trap proceedings conducted by the respondent CBI. P.W.5, who is the Inspector of Police working in the CBI, conducted the trap proceedings and spoke about receiving P.W.3 complaint, conduct of trap proceedings and thereafter the arrest of the accused and recovery of bribe money from him.

(vii) P.W.6, at the relevant point of time was working as Superintendent, Establishment, Agriculture Department, Puducherry, he spoke about the subsidy available to agriculturist and also regarding the application filed by P.W.3, seeking subsidy to install submersible motor and he also spoke about the procedure for granting subsidy. P.W.7 was working as Hydro-geologist, State Ground Water Unit, Agriculture Department, Puducherry spoke about the duties and responsibilities of the appellant while processing the application for subsidy.

(viii) P.W.8, is a Deputy Director, in the State Ground Water Unit, Agriculture Department, Puducherry, he spoke about the subsidy provided for the agriculturists and about the mode of sanctioning and distribution of the subsidy. P.W.9, the Investigation Officer spoke about the statement of witnesses recorded by him and after completion of investigation, the final report filed by him before the Special Court.

(ix) When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false and he has not examined any witness but marked Ex.D1, the letter issued by P.W.7 regarding the details of subsidy granted to various agriculturists.

(x) Considering those materials, the trial Court convicted the appellant and also sentenced him as stated above. Now, challenging the said conviction and sentence the appellant is before this Court with this appeal.

3. Mr. M.S. Govindarajan, learned counsel appearing for the appellant would contend that, the prosecution miserably failed to prove the demand of bribe money by the appellant and in the absence of any proof for demand, mere recovery of money from the appellant cannot be a ground for convicting the appellant for the offence under Section 7 of the Act and consequently the



offence under Section 13(2) r/w 13(1)(d) of the Act is also not maintainable.

4. Further according to the learned counsel, admittedly the appellant was working as an Agricultural Officer and his primary duty is to receive applications for subsidy and register the same, thereafter some other officer would conduct field inspection and submit his recommendation, based on that, a Committee constituted for that purpose will consider and grant subsidy. Only based on the recommendations of the Committee, subsidy is being distributed. The appellant absolutely has no role in recommending and sanctioning of subsidy and in such circumstance, there is no occasion for the appellant to demand and receive bribe amount from P.W.3 for granting subsidy.

5. The learned counsel strongly relied upon the evidence of P.Ws.6 and 8 to show that it is not the duty of the appellant to sanction subsidy amount. The learned counsel further submitted that one Mr.Asokan was engaged by the department to install the motors in the bore wells. P.W.3 handed over the money to the appellant which is meant for Mr.Asokan and it is not bribe money. According to him, since the appellant was not the authority to grant subsidy, there is no occasion for him to demand and receive money from P.W.3 and he has been falsely implicated in this case. Further according to the learned counsel, the trial Court without considering the materials erroneously convicted him and in support of his contentions, the learned counsel relied upon number of judgments, which will be referred to in the later part of this judgment.

6. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the C.B.I., would contend that the appellant being Agricultural Officer, he is in-charge of receiving and registering the application for subsidy and also to recommend for grant of subsidy, only thereafter the Committee constituted for this purpose will consider the application and grant subsidy. P.W.7, the officer working in the same department clearly stated that the relevant file was dealt with by the appellant and it is his duty to conduct field inspection and make recommendation for grant of subsidy, he was not cross examined by the accused and his evidence clinchingly prove that it is only the appellant has authority for recommending subsidy. That apart, evidence of P.Ws.3 and 4 clearly establish that the appellant demanded bribe amount and consequently accepted the same and in the trap proceedings conducted by the respondent, he was caught red handed. The evidence of P.W.5 trap conducting officer corroborate the evidences of P.Ws.3 and 4.

7. The learned Special Public Prosecutor further submitted that under Section 20 of the Act, there is a presumption and to



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register and after verifying the same, he will send it to the concerned officers for further proceedings. Thereafter, another agricultural officer will conduct field inspection and make recommendation, and the recommendations will be sent to a Committee specially constituted for the purpose of approving subsidy. Only based on the resolution passed by the Committee, the subsidy will be granted to the agriculturists. In the cross examination he would state that the agriculturists are entitled for subsidy once in five years and he has further stated that the appellant cannot consider the application for subsidy and the appellant cannot unilaterally accept or reject the application, it is ultimately for the Committee to decide and take a decision either to accept or grant subsidy.

12. Contrary to his evidence, P.W.7 who was working as Hydro-geologist in the appellant's office has stated that, it is the duty of the appellant to receive the application and subsequently conduct field inspection and make a recommendation to the higher officials for taking decision for granting subsidy. P.W.8 who was working as Deputy Director in the agriculture department has stated that as per the rules, the agriculturists are entitled to get subsidy once in five years and he has also categorically stated that for the year 2010-2011, no subsidy was granted for installing motor as sufficient fund is not available with the department. He further stated that it is not the duty of the appellant to consider the application for grant of subsidy and it is ultimately for the Committee constituted by the Government to take a decision. From the evidence of P.W.6 and P.W.8, it could be seen that the appellant is empowered only to receive and register the application for subsidy and it could be further seen that the agriculturists are not entitled to get second subsidy within a period of five years. Admittedly, as per the evidence of P.W.3, he received subsidy of Rs.46,345/- in the year 2010 for digging a bore well and in such circumstances he is not entitled for another subsidy in the year 2010-2011 as he had already availed the subsidy. Apart from that from the evidence of P.W.8, due to non availability of funds, no subsidy was granted for the year 2010-2011 to any agriculturist.

13. Considering those circumstance, when there is a statutory bar for grant of second subsidy within a period of five years and also the fact that no subsidy was granted anybody for the year 2010-2011, and the appellant has no power to grant subsidy, it is doubtful whether the appellant would have demanded and accepted the bribe amount from P.W.3 for granting subsidy. That apart, except interested testimony of P.W.3, there is no other evidence available to prove demand. Even P.W.4 the shadow witness only spoke about the acceptance of the amount and he has not spoken about the demand alleged to have



that one Mr.Asokan, who is an electrician engaged by the department to install the pump sets in P.W.3 bore well and the money is only meant for him. P.W.3 was also cross examined to that effect. The Hon'ble Supreme Court in C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala reported in (2009) 3 SCC 779 has held as follows:

"21.It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

22.It is 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 a reasonable doubt.

"4.....It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so,



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the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See Jhangan Vs. State 1966 (3) SCR 736). (Emphasis supplied)."

17. That apart, presumption available under Section 20 of the Act is only in respect of the offence under Section 7 and not for the offence under Section 13(1)(d) of the Act. Only on proof of acceptance of illegal gratification, the presumption under Section 20 of the Act will come into force and in the absence of proof of demand, based on the acceptance of currency notes no presumption can be drawn. The Hon'ble Supreme Court in N.Vijayakumar Vs. State of Tamil Nadu reported in 2021 AIR SC 766 has held as follows:

"Insofar 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 Sections 13(1)(d)(i) and (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 official 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."

18. In yet another judgment in Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136, the Hon'ble Supreme Court has held as follows:

"14. In P. Satyanarayana Murthy (supra), this Court took note of its verdict in B.Jayaraj vs. State of A.P. underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that 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



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servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Section 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder." (emphasis supplied)"

19. Considering these principles, in the absence of any proof for demand, presumption under Section 20 of the Act cannot be drawn against the appellant.

20. Considering these circumstances, as the prosecution has failed to prove the demand of bribe money by the accused beyond any reasonable doubt and mere possession and recovery of currency notes will not bring home the offence under Section 7 of the Act and consequently the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage also cannot be held to be proved.

21. Considering all the above circumstances, this Court is



of the considered view that prosecution has failed to prove the demand for illegal gratification by the accused beyond reasonable doubt, consequently the conviction under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act is only liable to be set aside, the appellant/accused is entitled for acquittal.

22. In the result,

(i) The appeal is allowed; the conviction and sentence imposed on the appellant/accused by the learned Special Judge for CBI Cases, Puducherry in Spl.C.C.No.14 of 2010, dated 29.06.2016, is set aside and the appellant/accused is acquitted.

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

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge for CBI Cases,
Puducherry
2. The Inspector of Police,
SPE/CBI/ACB, Chennai.
3. The Special Public Prosecutor,
For CBI Cases,

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.8259

+1cc to M/s.M.Shahjahan, Advocate, S.R.No.8821

Crl.A.No.512 of 2016

RSV(CO)
RGA(24/02/2022)