IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order	Date of Pronouncing Order
09.02.2022	18.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.A.No.428 of 2014

State of Tamil Nadu rep.by,
The Public Prosecutor,
High Court,
Madras - 600 104. ...Appellant

Vs.

S. Vedharasu ...Respondent

PRAYER : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to allow the appeal, set aside the judgment of acquittal passed by the learned Chief Judicial Magistrate, Perambalur in Spl.C.C.No.3 of 2003 dated 12.10.2012 and convict and sentence the respondent/accused.

For Appellant : Mr. E. Raj Thilak,
Additional Public Prosecutor

For Respondent : Mr. S. Karthikeyan
for Mr. M. Ravi

J U D G M E N T

This criminal appeal is preferred by the State against the judgment of acquittal passed by the trial Court in Special Case No.3 of 2003 on the file of Chief Judicial Magistrate, Perambalur.

2. The respondent/accused was charged under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Prosecution examined PW.1 to PW.20 witnesses and produced Exs.P1 to P42 documents and M.O.1 to M.O.8. Respondent examined DW.1 and DW.2.

3. The prosecution case as discerned from the evidence of prosecution witnesses is as follows:-

3(i). The respondent/accused during the period 30.09.1996 to 03.12.2001 was working as Sub Registrar at Sub Registrar's Office, Perambalur. P.W.2, the defacto complainant wanted to sell his land to an extent of 1.08 acres in Survey No.363/8 by dividing into plots and appointed Natarasu as his power agent. He met respondent/accused on 29.11.2001 with regard to preparation of Power of Attorney Deed and to know about the registration charges. Respondent/accused said to have informed him that registration charges is Rs.50/- and then he demanded Rs.300/- as illegal gratification for registering power deed. P.W.2 did not want to give the bribe. Therefore, he met the Inspector of Vigilance and Anti Corruption, Trichy at about 11.00 am on 03.12.2001 and gave Ex.P2 complaint.

3(ii). On the basis of his complaint, Ex.P3 FIR was registered. At about 1.00 pm, Periyasamy from Labour Department and Nataraj from Public Works Department came to the Vigilance and Anti Corruption Office. PW.18-Inspector/Govindasamy, introduced them to P.W.2 and asked them to read the complaint and FIR. P.W.2 brought Rs.300/- meant to be given to the respondent. Inspector demonstrated the procedures relating to sodium carbonate and phenolphthalein test and explained the details to P.W.2 and the witnesses. Ex.P4 Entrustment Mahazar was prepared. Rs.300/- notes (3xRs.100/-) are M.O.1 (series). Then they started to Sub Registrar's Office in a car and a jeep. Inspector dropped PW.2 and PW.3 one furlong away from Sub-Registrar's office. P.W.2 and P.W.3 witness Periyasamy, power agent Natraj met the respondent and P.W.2 handed over the power deed. 3(iii). After reading the power deed, respondent asked them to wait outside. After 15 minutes, he invited them and all the four went inside. Respondent demanded Rs.50/- towards registration charges and P.W.2 gave that money to him. Then, he sent witness Periyasamy and Natraj out of the room and asked him about what happened to the money demanded by him. P.W.2 gave Rs.300/- which he kept in his shirt pocket. Respondent asked him to keep the money on the table. P.W.2 kept the money on the table. Respondent using his right index finger, moved the money beneath the pen stand. Then, both of them came out of the office. He signaled to the Inspector of Police with the prearranged signal. Inspector of Police, other witness and other police persons came there. He explained to the Inspector about what had happened inside the room and identified the respondent. Inspector asked him to stay outside.

3(iv). P.W.3, the Junior Assistant from Labour Department had corroborated the evidence of P.W.2 with regard to the complaint given by P.W.2, demonstration of sodium carbonate-phenolphthalein test, preparation of entrustment mahazar, the demand and the acceptance of bribe money by the respondent on the date of trap e.t.c. In continuation, he corroborated the evidence of P.W.18 with regard to meeting the respondent inside his office and trap proceedings. It is seen from the evidence of P.W.18 and P.W.3 that P.W.18 introduced himself to the respondent and enquired him about the allegation of receipt of bribe money. Then, he conducted sodium carbonate-phenolphthalein test. There was no change of colour when the respondent dipped his hands in the solution. When the pen stand was dipped in the solution, there was no change in colour, but there was a change in colour when the visiting card was dipped in the solution. He recovered Rs.300/- identified by the respondent. He also recovered the documents submitted for registration by P.W.2. Suddenly, the respondent took out a bit paper from his pocket and torn it into pieces. Those pieces were recovered and entries with regard to certain payments were found recorded.

3(v). During the search in the office, a sum of Rs.10,325/- was recovered. After accounting the Government money and personal money, it was found that there was an excess of Rs.2,399/- in the office. The relevant records were recovered under Ex.P9 Mahazar. P.W.4, the attestor to the power deed has not supported the case of the prosecution and was treated as hostile witness. P.W.5 is the document writer who prepared Power of Attorney Deed. PW.6 is the typist, who typed the Power of Attorney Deed. P.W.7 is the power agent of P.W.2. P.W.8 helped in taking copy of the power deed in the office of P.W.6. P.W.9 was working as Assistant during the period 18.10.2001 to 20.03.2005 in Sub Registrar's office, Perambalur. He spoke about the arrest of the respondent, seizure of Rs.2,399/- and other records. P.W.10 was working as Junior Assistant. P.W.11 was working as Clerk in strong room. He spoke about getting the signature of the parties and witnesses in the Power of Attorney Deed. P.W.12 was working as Office Assistant in the Sub Registrar's Office.

3(vi). P.W.13, P.W.14 and P.W.15 were working in the Sub Registrar's Office, Perambalur unofficially and they were paid by respondent. P.W.16 was Scientific Assistant Grade 1 in Forensic Science Department, Chennai. He spoke about the conduct of scientific analysis of the material object received and giving his Ex.P28 report. P.W.19 the investigation officer spoke about investigation in this case. P.W.20/Inspector of Police, completed the investigation and filed a final report after getting sanction for prosecution from P.W.1. Respondent denied the incrimination evidence available against him and examined D.W.1 and D.W.2.

4. On considering the oral and documentary evidence, the learned trial Judge found that the prosecution has failed to establish the charges against the respondent, for the reason

that the trap proceeding was bristled with suspicious circumstances, doubts improbabilities and illegalities. The prosecution failed to prove the guilt of the respondent and found that the charges framed against the respondent are not proved beyond all reasonable doubt and acquitted the respondent.

5. Challenging the said judgment, the State has preferred this appeal.

6. Learned Additional Public Prosecutor appearing for the State submitted that the learned trial Judge has not given proper weightage and consideration to the evidence of P.W.2, P.W.3 and P.W.18. These witnesses have no grudge or animosity against the respondent and they have no reason to give false evidence against the respondent. If entire evidence of prosecution witnesses is taken without dissecting the pieces of evidence, in isolation, it would be clear that the charges against the respondent is proved. The trial Court failed to invoke the presumption once the demand and acceptance is proved. Nobody would put the money on the table of the accused without a demand. The fact that the pen stand and visiting card tested positive for phenolphthalein test would amply prove that the respondent demanded the bribe money and accepted. However, the trial Court has not considered this aspect and acquitted the respondent on flimsy grounds. Therefore, the learned counsel for the appellant prayed for setting aside the judgment of the trial Court and for convicting and sentencing the respondent.

7. In response, the learned counsel for the respondent submitted that there is a delay in giving the complaint to the police and the delay is not properly explained. When it is claimed that the respondent demanded bribe on 29.11.2001, the complaint was given only on 03.12.2001. This delay raises suspicion with regard to the genuineness of the complaint. There is also contradiction between the evidence of P.W.2 and P.W.3 with regard to the manner in which, the respondent accepted the bribe money. When PW.2 says that the respondent pushed the money with his finger, PW.3 says that the respondent placed the pen stand over the bribe money. No one spoke about visiting card. Phenolphthalein test failed when the respondent's fingers were dipped in the solution. P.W.7 stated that respondent refused to receive the money offered by P.W.2. No records had been produced to show that P.W.3 was officially permitted to be present at the time of trap proceedings. In the absence of the documents to show that he was permitted to be present, it has to be construed that his presence at the spot is doubtful.

7(i). It is further submitted that the trial Court has properly analysed the evidence and rightly acquitted the respondent and he prayed for confirming the judgment of the trial Court.

7(ii). He relied on the judgment reported in CDJ 2014 SC 295 in Muralidhar @ Gidda & Another Vs. State of Karnataka for the preposition as to the powers of the appellate Court when deciding the appeal against the order of acquittal. It is observed in this Judgment as follows:-

> It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Thought, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial Court. It i so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

7(iii). The judgment reported in CDJ 2012 MHC 2421 in R.Venkatraj Vs. State is relied for the preposition that unexplained delay in preferring the complaint would create doubt in the prosecution case.

10. Even though PW1 decided that no bribe should

be given for getting the certificate on 25.01.2000, he made the Complaint only on 30.01.2000 after 6 days. In the Complaint there is no explanation for the said delay. But in the evidence, he says that he was waiting for 2 or 3 days but he would not secure the money, however, he did not want to get the certificate after paying the illegal gratification. The absence of explanation for delay in lodging the Complaint is fatal to the prosecution as to the evidence.

11. The learned Counsel for the Appellant Mr. S. Ramasamy, would place reliance upon a decision of this Court in P. Meganathan versus State of Tamil Nadu, 2010 (1) MWN (Cr.) 454 : 2010 (3) MLJ (Crl) 182, which touches on this aspect, wherein S. Nagamuthu, J. has observed that when there is no explanation for delay in preferring Complaint, it would create doubt in the prosecution case. In the said case, though the Complaint was said to have been prepared on 5.9.1995, it was only given to Police on 12.9.1995. In the present case on hand, even though PW1 decided not to give the bribe, only after 6 days he laid the Complaint. This delay creates doubt over the case of the prosecution.

7(iv). The judgment reported in CDJ 2018 MHC 681 in A. Deenadayalan Versus State is relied for the preposition that when there is no document produced to show that the trap witness was officially called, his presence at the scene of trap becomes doubtful.

The failure of the prosecution to place before the Court document to show that PW-3 was officially called to be witness for the trap proceedings, renders his presence at the scene of trap and thereafter, doubtful.

8. Considered the rival submissions and perused the records.

9. The prosecution case is that the respondent demanded a sum of Rs.300/- from P.W.2 on 29.11.2001 for registering a power deed. P.W.2 did not want to give the bribe and therefore, he gave a complaint to the appellant-police. A trap was arranged on 03.12.2001. At about 5.30 pm on 03.12.2021 the respondent again made a demand of bribe money when the power deed was presented for the registration. P.W.2 paid the bribe money, came out of office and signaled to P.W.18-Inspector with prearranged sign. That was followed by the recovery of bribe

money, phenolphthalein test and recovery of other money and records. With regard to the first demand on 29.11.2001, there is no corroborative evidence except the evidence of P.W.2. It is claimed by the prosecution that P.W.2 has no personal animosity to give a false complaint against the respondent.

10. On the other hand, the case of the respondent is that P.W.2's relative Balakrishnan was working as Head clerk in the Sub Registrar's Office, Perambalur. To help him and to send the respondent out from Sub Registrar's Office, Perambalur, P.W.2 gave a false complaint against the respondent. P.W.2 admitted that Head clerk, Balakrishnan of Sub Registrar's Office, Perambalur was his relative but he denied other suggestion that at his instance, he gave a complaint.

10(i). In cases like this, the demand of bribe, acceptance and recovery have to be proved beyond any reasonable doubt. As indicated above, with regard to the demand on 29.11.2001 there is no corroborative evidence to the evidence of P.W.2. On the day of trap proceeding, it is the evidence of P.W.2 that after sending the persons accompanying him, except PW.3, respondent demanded the bribe money asked by him. Then P.W.2 took Rs.300/- from his shirt pocket and gave it to the respondent. Respondent asked him to keep it on the table and accordingly, he did. Respondent pushed the money using his right index finger beneath the pen stand. This is the evidence of P.W.2. He again reiterated in his cross examination that respondent has not received the money with his hands. The other witness who said to have witnessed the alleged acceptance of bribe money is P.W.3. It is the evidence of P.W.3 that when the respondent asked about the money demanded by him, P.W.2 took Rs.300/- from his shirt pocket and gave it to respondent. Respondent asked him to keep the money on the table then he placed a pen stand on the money. P.W.3 did not say that the respondent pushed the money by using his right index finger beneath the pen stand. Thus, from the evidence of P.W.2 and P.W.3, it is found that there is apparent contradiction with regard to the manner, in which the money was received and kept under the pen stand.

10(ii). Admittedly, the phenolphthalein test for hands of the accused tested negative. Both the witnesses have not said anything about visiting card. However, Ex.P28 report indicates that the pen stand and visiting card tested positive for the phenolphthalein test.

10(iii). The case of the respondent is that he never demanded bribe from P.W.2. It was P.W.1, who tried to bribe him and he refused to receive the money. Then PW.2 kept the money on the table. That was the reason why P.W.2's hands were not tested positive for the phenolphthalein test. In this regard, the evidence of P.W.7 is relevant. P.W.7 is the power agent, on whose favour, the Power of Attorney Deed was executed. It is his evidence that after the parties and witnesses signed the document, P.W.2 gave money to the respondent. Respondent refused to receive the money and pushed it. Though P.W.7 was examined in support of the prosecution case, he did not support the case of the prosecution but gives evidence in favour of the respondent supporting the respondent's case that P.W.2 tried to give money to the respondent and the respondent refused to receive it. His evidence is also supported by P.W.11, the staff of Sub Registrar's Office, Perambalur.

10(iv). The consideration of oral and documentary evidence shows that the acceptance of alleged bribe money by the respondent is not scientifically proved by the prosecution. When it is specifically alleged that P.W.2's relative was working as Head Clerk and to help him by sending the respondent out of the Sub Registrar's Office, Perambalur, P.W.2 gave a false complaint at the instigation of his relative Balakrishnan, the possibility of false implication cannot be ruled out. Especially when the acceptance of alleged bribe money by the respondent is not scientifically proved. There are other lapses like the delay of three days in giving the complaint, failure to produce any official authority for the presence of P.W.3 during the trap proceeding. These lapses in procedures certainly create a genuine doubt in the case of the prosecution. Unless the demand, acceptance and recovery are proved without any doubt, convicting a public servant and sentencing him will result in miscarriage of justice.

10(v). The trial Court found on evidence that the trap proceedings bristled with suspicious circumstances, doubts, improbabilities and illegalities and the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. There is a presumption of innocence in favour of the accused person and it gets strengthened by an order of acquittal passed by the trial Court. Interference is required only when the conclusion raised by the trial Court are probably wrong or based on erroneous view of the law or if any such conclusions are allowed to stand, they are likely to cause grave injustice.

11. As indicated above, there is a genuine doubt as to whether, the respondent demanded the money and accepted it. There is a delay of three days in giving a complaint. Presence of P.W.3 at the trap spot was not established by producing the necessary authority from his superior officer.

12. Therefore, this Court is of the considered view that the trial Court has rightly found the respondent not guilty of the charges levelled against him and this finding requires no

interference. Accordingly, the judgment of the learned Chief Judicial Magistrate, Perambalur dated 12.10.2012 is confirmed and the criminal appeal stands dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chief Judicial Magistrate,
   Perambalur.

2. The Public Prosecutor,
   High Court of Madras.

3. The Inspector of Police,
   Vigilance & Anti Corruption,
   Trichy.

+4cc to Mr.M.Ravi, Advocate, S.R.No.18696

Crl.A.No.428 of 2014

RR(CO)
RN(31/03/2022)