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CrI.A(MD)No.256 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 20.04.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGO VAN**

CrI.A(MD)No.256 of 2015

William
Former Full Time Selection Grade Watchman,
O/o Assistant Commissioner of Labour (Conciliation)
Officer,
Nagercoil. : Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti Corruption,
Nagercoil.
(Crime No.4 of 2012) : Respondent/Complainant

Prayer: Criminal Appeal filed under 374(2) of the Criminal Procedure Code to call for the records relating to the judgment passed in Special Case No.3 of 2013 on the file of the learned Special Judge Cum Chief Judicial Magistrate, Nagercoil, dated 24.08.2015 thereby acquitting the Appellant.

For Appellant : Mr.C.Muthusaravanan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

**JUDGMENT**

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This Criminal Appeal is preferred against the judgment of conviction and sentenced passed by the learned Special Judge Cum Chief Judicial Magistrate, Nagercoil, in Special Case No.3 of 2013, dated 24.08.2015. By which, the appellant was convicted and sentenced to undergo 2 years of Rigorous Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months Simple Imprisonment for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988; to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months Simple Imprisonment for the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 1 month Simple Imprisonment for the offence under Section 420 of IPC, and directed the above sentences to run concurrently.

2.The case of the prosecution:-

P.W.2 lodged a complaint with the first respondent stating that the appellant, who was working as Full Time Selection Grade Watchman in the Assistant Commissioner of



Labour (Conciliation), Office, Nagercoil, demanded a sum of Rs.5,000/- for the purpose of arranging the registration of Society called 'Kumari Nila Construction and All Labour Union'. In pursuance of the complaint lodged by him, a case was registered in Crime No.4 of 2012 by the first respondent and trap was laid and this appellant accepted the bribe amount of Rs.5000/-. Based upon that, investigation was undertaken and a final report was also filed before the learned Special Judge Cum Chief Judicial Magistrate, Nagercoil, which took cognizance in Special Case. No.3 of 2013 and framed the following charges against the accused.

(ii) The first charge is that the appellant demanded a sum of Rs.5000/- as bribe amount for the purpose of arranging registration of the above said Society and accepted the same on 29.03.2012, at about 05.10 p.m. Thereby, he committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

(iii) The second charge is that by demanding and accepting Rs.5000/- as bribe amount, he has committed criminal misconduct and thereby, he is liable to punish for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.



(iv) The third charge is that knowing that the form for registration of Union can be filed only before the Assistant Commissioner of Labour, Tirunelveli, he deceived the defacto complainant and demanded and accepted Rs.5000/- as bribe amount and thereby, he committed the offence punishable under Section 420 of IPC.

(v) After framing the above said charges, the appellant was questioned and he denied the charges. For proving the above said charges, the prosecution examined 10 witnesses and marked 20 documents. On the side of the accused namely, the appellant herein, one Subash was examined as D.W.1 and 1 document was marked and 5 Material Objects were exhibited by the prosecution.

3.The case of the prosecution as narrated through the evidence:-

P.W.2, who is the defacto complainant is a resident of Kuzhithurai. He was a member of Labour Union called 'Tamilnadu Jeeva Construction and All Labour Union'. Later, he proposed to form a Union called 'Kumari Nila Construction and All Labour Union'. He was elected as Secretary. The Labour Union wants to register the same as



11.00 a.m. That was received by the Inspector of Police, namely, Rabin Gaanasingh, who had registered the First Information Report.

(iii) The above said Robin Gnanasingh, examined P.W.9, received the complaint and registered a case in Crime No.4 of 2012 for the offence under Section 7 of the Prevention and Corruption Act. He submitted the original copy to the concerned Court and requested the officials for assisting him to lay a trap. As per his request, one Sivaram and Chitthiraivel came to the office and he took the further process of laying the trap. He prepared the mahazar noting the number of the currency note supplied by P.W.2. He gave instructions to the witnesses as well as P.W.2 with regard to the action to be taken at the time of trap. He advised P.W.2 and other witnesses to approach the appellant on 29.03.2012 and pay the amount if it is demanded and he also advised to give a signal, so, that the trap team may enter into the office. In pursuance of the above said process, they started from the Police Station in a vehicle bearing Registration No.TN-07-G-2511 . They reached the office at 04.30 p.m. P.W.2 and the witness Chitthiraivel, who is examined as



P.W.3 were advised to enter into the office and contact the appellant. They went inside the office and the police team was waiting outside. At about 04.40 p.m, P.W.2 and P.W.3 came out of the office and they stated that the accused was not available. They waited for some time. At about 05.15 p.m, P.W.2 and P.W.3 came out of the office and made a signal.

4.P.W.2 narrated the events which subsequently, happened:-

At about 5.05 p.m, the appellant came to the office. He and P.W.3 went inside the office and handed over the challan and other forms. At that time, the appellant demanded whether he had brought Rs.5000/-. He handed over the above said Rs.5000/-, which was counted by the accused and put the same in the right pant pocket in a purse. They came out of the office and made a signal.

5.P.W.9 narrated the further events which subsequently happened:-

On receiving the signal, the police team went inside the office of the appellant. The accused was identified



by P.W.2 & P.W3. P.W.2 was sent out side. He prepared Sodium Bicarbonate Solution. He asked the appellant to dip his right hand finger. He dipped the same and solution turned Pink. He collected the same in a bottle and labelled it. He preferred another Sodium Bicarbonate Solution and asked the appellant to dip his left hand. He also dipped the left hand, turned Pink. He collected the sample in a separate bottles and labelled it. He arrested the accused and enquired him. He handed over the bribe amount, which was received by him from P.W.2. Which was kept in money purse. He seized the money purse as well as the money. He compared the number of the currency notes with the mahazar, it was found that they are one and the same. He prepared another Sodium Bicarbonate Solution and dipped the purse. It also turned Pink. He collected the same in another bottle and labelled it. He also recovered the formats and application that was submitted by P.W.2 for registering the Labour Union as Society. He prepared recovery mahazer and made a search upon the house of the appellant. He submitted an alteration report by adding the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the accused was remanded to custody.



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6.Further investigation was undertaken by P.W.10, Mr.Hector Dharma Raj, the Inspector of Police, Vigilance and Anti Corruption, Nagercoil. He took up the further investigation on 30.03.2012 and recorded the statement of the witnesses and took steps to send the samples for Forensic Science Laboratory for examination. He collected the scientific report. He recorded the statement of the further witnesses and after completing the investigation, filed a final report on 18.05.2013 making allegation that the appellant has committed the offence punishable under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 of IPC.

7.P.W.3 corroborated P.W.2 in material particulars with regard to the laying of trap, trap and arrest of the accused etc, facts.

8.P.W.4 is also a member of the above said Labour Union, which was formed by P.W.2. He spoken about the arrangement that was made for registering the Labour Union.



9.P.W.5 was working as Deputy Commissioner of Labour, Tirunelveli. He stated that his office is not empowered to register the Union. It must be submitted before the Deputy Commissioner of Labour of the Tirunelveli and Deputy Commissioner of Labour (Conciliation) Office, Nagercoil, is not competent to register the Labour Union.

10.P.W.6 stated that the appellant was working as night watchman. He would further submit that since sufficient staff was not available in the office, the appellant was utilised for doing the official job.

11.P.W.7 has spoken about the sending of witnesses for helping the police.

12.P.W.8 was working as Assistant Director of Forensic Science Laboratory, Chennai. She has examined the samples, which were submitted for examination and she also sent the report.

13.After completing the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. He denied the evidence of the prosecution



witnesses. He examined one Subash on his side. He stated that he used to visit the Assistant Commissioner of Labour (Conciliation) Office, Nagercoil, frequently. At that time, P.W.2 also used to come to the above said office. So, P.W.2 was known to the accused and they were also in close contact. During February 2012, when they were taking tea, P.W.2 namely, Sibbu, requested the appellant to lend money for the purpose of meeting medical expenses of his uncle. The appellant has also promised to arrange for the money. After that, P.W.2 told him that the accused lent money and after a week he also informed that the appellant demanded the above said money immediately and P.W.2 was not in a position to repay the amount and because of that, a wordy quarrel as well as the physical assault took place. Since P.W.2 has frequently visited to the office where the appellant was working, he was aware about the procedure to be followed for registering the Labour Union. With this, examination of accused side witnesses are also over.

14. After hearing the prosecution as well as the defence, the Trial Court recorded the findings of the conviction and imposed the sentence as noted above.



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15.Challenging the conviction and sentence, the present appeal has been preferred by the appellant.

16.Heard both sides.

17.Appeal is against the conviction and sentence. It is not in dispute that the appellant was working as a full time watchman in the office attached to the Assistant Commissioner of Labour (Conciliation) Office, Nagercoil, during the relevant point of time, which was also admitted by the witness No.6. As mentioned above, he stated that this appellant was also utilised for the purpose of attending the work since sufficient staff was not available. From his evidence, it is seen that the Assistant Commissioner of Labour (Conciliation) Office, Nagercoil, is not empowered to receive the application and registration of Labour Union and it must be undertaken only by the Deputy Commissioner of Labour, Tirunelveli. According to him, for the purpose of verification only, the application will be forwarded to the Assistant Commissioner of Labour. So, according to him, the Deputy Commissioner of Labour is the competent



person. So, from the evidence of these witnesses, it is clear that the office, where the appellant was working as a full time watchman is not empowered to receive the application and process the same.

18.His evidence is relied by the appellant for the purpose of argument that since the office is not empowered to receive and process the same, the case of the prosecution that this appellant demanded money as bribe for the purpose of arranging the registration is completely misplaced. According to him, only to wreck personal vengeance over the appellant, such a false case has been registered. So, D.W.1 has spoken about the acquaintance of P.W.1 with that of the accused persons. His evidence was also cited by the appellant that P.W.2 was very well aware of the procedure to be followed and infact, he has also admitted during the course of evidence that he has visited the office in connection with the labour issues. So, according to the appellant, absolutely, there is no truth in the case of the prosecution that the appellant had demanded money as bribe from P.W.2 for making the arrangements. When his office is not empowered to receive the application and



process the same, the question of demanding bribe is completely a misplaced one.

19.But, however, the learned Additional Public Prosecutor would submit that there is evidence on record to show that the preliminary process will be undertaken only by the office, where the appellant was working. For that purpose, he relied upon the evidence of P.W.6. Wherein it has been stated by him that the application will be forwarded to the District Labour Officer for the purpose of verification. On the basis of the verification report, further action will be undertaken by the Deputy Commissioner of Labour, Tirunelveli.

20.The contention on the part of the appellant that absolutely, there is no occasion for him to demand the bribe amount from P.W.2, who was well known about the procedure is not an acceptable one.

21.Even during the cross-examination of P.W.6, he has stated that for the purpose of forming a Labour Union, challan may be obtained from his office with seal. He further stated that on 07.03.2012, P.W.2 came to the





alone, no inference can be drawn to the effect that absolutely, there is no possibility for P.W.2 to approach the appellant for any help or assistance. With this preliminary point let us go to the main issue.

24.For the purpose of proving the charges, the prosecution must prove the same beyond all reasonable doubts about the demand as well as the acceptance for sustaining the charges. The first ground has been negatived by me for the above said reasons. Now, as per the evidence of P.W.2, the first demand was made on 08.03.2012. Again, it was demanded on 27.03.2012 and finally, on 29.03.2012 when trap was laid.

25.Now, we will go to the complaint, Ex.P.3. On 08.03.2012, the appellant demanded Rs.5000/- and the same was repeated by him on 27.03.2012.

26.Now, we will go to the evidence of P.W.2 on this aspect. Either on 07.03.2012 or on 08.03.2012 or on 27.03.2012, whether he approached the appellant for registering the Labour Union has not been stated either in the complaint or in the statement. But, he has



narrated the events took place on 07.03.2012, 08.03.2012 and 27.03.2012. So, it may not be given any importance to this wrong statement. But, it appears that P.W.2 has not made any complaint against the appellant or his higher authorities till the complaint was lodged. So, there is no corroboration with regard to the demand was made by the appellant on 07.03.2012, 08.03.2012 and on 27.03.2012. It is also the evidence to the effect that he did not make any consultation or discussion with his members about the demand that was made by the appellant. That point of evidence by P.W.2 to the effect that on 3 occasions, the appellant demanded Rs.5000/- is not supported by any corroborated evidence.

27. Whether there was demand by the appellant on 29.03.2012 is the next question. He would say that on that particular date, after receiving the challan, the application and formats, he enquired whether he brought Rs.5000/-. At that time, he paid the amount to the appellant and this piece of evidence is corroborated by P.W.3 Chitthiraivel, who is a shadow witness. He stated that the appellant had enquired P.W.2 whether he has brought the money, which was demanded by him. At that



time, he paid the money, which was counted by the accused, appellant herein. So, according to the prosecution evidence of P.W.2 with regard to the demand on that particular date is fully corroborated by the evidence of P.W.3. So, with regard to the piece of evidence, absolutely, there is no contradiction. The argument that P.W.2 has stated that if really, he had the knowledge about the fact that the office where the appellant was working is not empowered to process the application and he would not have approached the appellant and the case should not have been registered.

28.The contention on the part of the appellant that believing that it is a repayment of loan amount only, he received the same from P.W.2 is absolutely without any document any evidence. The oral evidence of D.W.1 is highly unbelievable that P.W.2 received a sum of Rs. 15,000/- from the appellant as loan amount without any document any evidence. So, the evidence of D.W.1 to the effect that P.W.2 informed him about the loan which was given by the appellant as well as the subsequent trouble between them regarding the repayment of loan is also cannot be accepted without any documentary proof.



Absolutely, no enmity worth considering has been made out by the appellant.

29.It is the further contention of the appellant that there was an inordinate delay in lodging the complaint. But, from the sequence of events that have been narrated by P.W.2. I find tht absolutely, there is no reason to disbelieve the evidence of P.W.2 on this aspect.

30.The final argument on this factual aspect is that Ex.P.6, the application form, is addressed to the Deputy Commissioner, Tirunelveli. So, according to the appellant, P.W.2 was conscious about the procedure and that is why he has addressed the same to the competent authority. But, this argument has already been addressed by the learned Additional Public Prosecutor by relying upon the evidence of P.W.6 that preliminary work be undertaken by his office. So, this ground is not also available to the appellant.

31.So, I find that the demand on that particular date and the acceptance of bribe has been proved by the prosecution beyond all reasonable doubts.



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32.Now, come to the legal aspects, the learned counsel for the appellant would heavily rely upon the evidence of P.W.1 to assail the sanction order. During the course of cross-examination, he has stated that a letter was addressed by the first respondent to the Commissioner of Labour, Chennai, with regard to the sanction. In pursuance of the above said letter, the Commissioner of Labour, wrote a letter to him. In pursuance of the above said advise only, he issued the sanction order. In the letter, he was advised to procure and get the model sanction order. Noticing the above said advise only, he issued the sanction order.

33.So, this piece of evidence is highly relied by the accused for the purpose of argument that he has simply forwarded the advise given by the Commissioner of Labour and he signed in the sanction order without applying his mind to the facts and circumstances and for that purpose, has relied upon the following judgments:-

1.Mohammed Iqbal Ahmed Vs State of Andhra Pradesh (1979 Supreme Court Cases (Cri) 926).

2.Mansukhlal Vithaldas Chauhan Vs



State of Gujarat (1997 Spreme Court Cases (Cri) 1120).

3.State of Karnataka Vs Ameerjan (2008 1 Supreme Court Cases (Cr) 130).

4.T.K.Ramesh Kumar Vs State through Police Inspector, Bangalore (2016 3 Supeme Coiurt Cases (Cri) 316).

5.Konsam Tharongou Singh Vs The Union Territory of Manipur (Laws (Crl.J 1972 0 802, Laws(AGU 1971 12 1)).

6.L.Venkadeshan Vs State by the Additional Deputy Superintendent of Police, Vigilance and Anti Corruption, Virudhunagar (2013 (2) T.N.L.R 385 (MAD) (MB)).

34.For which, the learned Additional Public Prosecutor would submit that simply because, P.W.1 has followed the advise and passed the sanction order on the basis of the model, it cannot be assailed.

35.No doubt that sanction playas an important role in the criminal prosecution under the provisions of



Prevention of Corruption Act. Application of mind to the facts and circumstances of the case by the sanctioning authority is *sine-qua-non* for sustaining the sanction order.

36.The learned counsel for the appellant would submit that in a known case, a writ petition was filed seeking direction to the concerned authorities to accord sanction to prosecute the accused, a writ of mandamus was also issued, which was highly deprecated by the Hon'ble Supreme Court stating that a Writ of Mandamus cannot be issued to direct the competent authority to accord sanction. Because according sanction involves conscious application of mind to the facts and circumstances.

37.The learned counsel for the appellant would rely upon the paragraph Nos.3 & 4 of the Mohammed Iqbal Ahmed Vs State of Andhra Pradesh case (cited Supra), similarly, paragraph No.9 of the State of Karnataka Vs Ameerjan case (cited Supra), Which followed the above said Mohammed Iqbal Ahmed case, Paragraph Nos.17 & 18 in T.K.Ramesh Kumar Vs State through Police Inspector, Bangalore case, paragraph No.9 in Konsam Tharongou Singh Vs The Union



Territory of Manipur case and paragraph No.28 in L.Venkadeshan Vs State by the Additional Deputy Superintendent of Police, Vigilance and Anti Corruption, Virudhunagar, case, wherein, we also find reference to the above said State of Karnataka Vs Ameerjan case (cited Supra). So, from this observation of the Hon'ble Supreme Court as well as the various High Courts as mentioned earlier, sanction order has its own sanctity.

38.Now, the question arises for consideration is that **whether P.W.1 has satisfied the requirements, which is expected from him.**

39.The mistake that was committed by him is that it is stated that he also perused the explanation offered by the accused. But, the Trap Laying Officer namely, P.W.9 has stated that he has not recorded the statement of accused person soon after making the arrest.

40.Section 19 of the Prevention of Corruption Act, 1988, reads as under:-

"19.Previous Sanction necessary for prosecution-



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(1) No court shall take cognizance of an offence punishable under [Sections 7,11,13 and 15] alleged to have been committed by a public servant, [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]

a) in the case of a person [Who is employed, or as the case may be, was at the time of commission of the alleged offence employed[in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

b)in the case of a person [who is employed, or as the case may be, ws at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

c) in the case of any other person, of the authority competent to remove him from his office”

.....

4.In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the



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fact whether the objection could and should have been raised at any earlier stage in the proceedings."

"81.Expression "failure of justice" -

The expression "failure of justice" is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Limited V.Department of the Environment*, (1977) 1 All. E.R.813: 1978 AC 359, foll. The Criminal Court, particularly the Superior Court should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage.- *State by Police Inspector V. T.Venkatesh Murthy*, 2004 S.C.C (Cr.) 2140 at p.2143: 2005(1) Kar.L.J.41 at pp.44-45 (SC)

A failure of justice is relatable to error, omission or irregularity in the sanction. Therefore, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of



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the P.C.Act, 1988 is a matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the Court under Cr.P.C., it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance.- Ashok Tshering Bhutia V.State of Sikkim, (2011)4 S.C.C. 402 at p.411: 2011 Cr.L.J. 1770: A.I.R.2011 S.C. 1363."

41.A reading of these observation shows that the error or omission in the sanction order unless it cause failure of justice will not nullify the proceedings.

42.The appellant must say because of this error or mistake in the sanction order, his case has been prejudiced and affected, which resulted in the failure of justice. But, except stating that P.W.1 has not applied his mind to the facts and circumstances of the case, no other ground or prejudice has been brought on record either during the course of trial or during the course of appeal proceedings. The appellant should not be permitted to take advantage of this error or mistake committed by P.W.1, considering the fact that the amount involved is Rs.5000/-, I am of the considered view that the grounds



that have been made by the appellant are not convincing and so, all the grounds that have been made by the appellant are rejected and the conviction and sentence passed by the Trial Court in all three counts are liable to be confirmed.

43. Accordingly, the judgment of conviction and sentence passed by the Special Judge Cum Chief Judicial Magistrate, Nagercoil, in Special Case No.3 of 2013, is confirmed and in fine, the criminal appeal is **dismissed**.

20.04.2022

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

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To

- 1.The Special Judge Cum Chief Judicial Magistrate,
Nagercoil.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Nagercoil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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