



Crl.A.(MD) No.401 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.03.2022

DELIVERED ON: 29.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.A.(MD) No.401 of 2016

P.Vijayakumar

... Appellant

VS.

State represented by
The Inspector of Police,
Vigilance and Anticorruption,
Madurai.
Crime No.1 of 2014

... Respondent

PRAYER:- This Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed against the appellant by the learned Special Judge for Prevention of Corruption Act Cases, Madurai in Special Case No.32 of 2014 on 04.10.2016.

For Appellant : Mr.A.Robinson for
Mr.M.Saravanan

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



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JUDGMENT

WEB COPY This Criminal Appeal is filed against the judgment dated 04.10.2016 made in Spl.C.No.32 of 2014 on the file of the learned Special Judge for Prevention of Corruption Act Cases, Madurai.

2. P.W2, by name P.Kannan lodged a complaint with the respondent herein stating that the appellant herein for the purpose of transferring a patta and for measuring the property, which belongs to P.W2, demanded and accepted a sum of Rs.4,000/- as bribe amount. So, on the basis of the complaint given by P.W2, pre-trap arrangement was made, in pursuance of which trap was also made and the accused, who is the appellant herein, was arrested, when he demanded and accepted a sum of Rs.4,000/- from P.W2 as bribe.

3. On 17.02.2014 at about 11.15 am., the accused received the aforesaid amount as bribe. So, the investigation was undertaken on the basis of the complaint given by P.W2 and after completing the formalities of investigation, final report was filed before the concerned Court, which was also taken cognizance in Spl.Case No.32 of 2014 by the learned Special Judge for Prevention of Corruption Act Cases, Madurai for the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.



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4. After appearance of the accused and after completing the formalities of furnishing the copies, the following charges were framed against the accused.

CHARGES AGAINST THE ACCUSED:-

i) On 14.02.2014 at about 03.00 pm., the appellant/accused demanded a sum of Rs.5,000/- from P.W2 as bribe for measuring the property and for transfer of patta. The amount was reduced after bargaining to Rs.4,000/-. In pursuance of the aforesaid demand, on 17.02.2014 at about 11.15 am., the accused accepted a sum of Rs.4,000/- as bribe from P.W2 and thereby, he has committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988 Act.

ii) Being a public servant, the appellant/accused demanded and accepted a sum of Rs.4,000/- as bribe and thereby, he has committed the offence punishable under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

5. The accused denied the charges and claimed to be tried. So, on the side of the prosecution, for the purpose of proving the guilt of the accused, totally 13 witnesses have been examined and 18 documents were marked apart from 5



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material objects. On the side of the defense, no witness and no document were examined and marked.

6. At the conclusion of the trial process, the trial Court found that the charges framed against the appellant have been proved by the prosecution beyond all reasonable doubt and convicted him to undergo 1 year rigorous imprisonment and to pay a sum of Rs.5,000/- as fine and in default of paying the fine amount, to undergo simple imprisonment for a period of 2 months for each of the offence under Section 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. As against the conviction and sentence, the appellant has preferred the present appeal.

THE FACTS OF THE CASE AS NARRATED THROUHG THE PROSECUTION EVIDENCE ARE AS FOLLOWS:-

7. P.W2, namely, P.Kannan, the de-facto complainant, is the resident of Karambakudi. He purchased the property in Kavandanpatti village on 17.04.2008. For change of patta, he made an application on 21.11.2013. On enquiry, he was informed that sub-division must be made by measuring the property. So, he was advised to contact the Surveyor. After 10 days, P.W2 approached one Paulraj, who was working as Head Surveyor during that time.



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8. On his direction, P.W2 contacted the accused and also handed over the relevant documents and at that time, the accused again asked P.W2 to contact the aforesaid Paulraj. Thereafter, Paulraj demanded a sum of Rs.5,000/- as bribe amount and after bargain, it was reduced to Rs.4,000/-. He told the complainant to hand over the money either to Paulraj or to some other person. Thereafter, P.W2 consulted and discussed with his brother about the issue and they decided to lodge a complaint, upon which the present complaint was lodged on 17.02.2014 at about 07.15 am., with the respondent police. FIR was registered and further process was carried on.

9. Further event is spoken by P.W12, A.Kannan, who was working as Inspector of Police attached to the respondent department.

10. He received the complaint and registered the case in Crime No.1 of 2014 for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. He also made a request to depute two responsible Government Officials to assist him in the trap process. In pursuance of the aforesaid request, one K.R.Nirmala and one Kalai Murugan were deputed. They also appeared before him at about 09.00 am., and usual process of preparation of sodium bicarbonate solution and sample of phenolphthalein powder in the



currency notes that was supplied by P.W2 were undertaken. He also prepared a Mahazar noting down the serial numbers of the currency notes. He advised P.W2 and other witnesses to follow his instructions at the time of trap. After making the preliminary preparations, all started at about 10.00 am., towards the office of the accused. At about 11.05 am., they stopped the vehicle in a place and he advised P.W2 and other witnesses to go to the office of the accused and if any demand is made by the accused, hand over the money and make a signal.

11. Further event is spoken by P.W2. He would say that P.W2 along with the witness, Kalai Murugan went inside the office of the appellant and he made a request to the appellant to measure the property and also informed him that one Paulraj advised him to contact him. He put the money on the left side shirt pocket of the appellant stating that the money was demanded by the aforesaid Paulraj. As advised by P.W12, he made a signal. On seeing the signal, the police team came inside the office of the appellant.

12. Further event is spoken by P.W12. He would say that the accused was identified by P.W2. On seeing the police team, the accused got tensed. He requested Paulraj to be a witness to the events. They prepared the sodium bicarbonate solution and asked the accused to wash his right hand. The accused



followed the instructions and washed his right hand in the sodium bicarbonate solution and it turned pink. That was collected in a container, labelled and sealed. Similarly, another sodium bicarbonate solution was also prepared in another container and the accused was advised to wash his left hand. The accused followed the instructions and washed his left hand in the sodium bicarbonate solution and it also turned pink. It was also collected in another container, labelled and sealed.

13. On enquiry, the accused told that he accepted and received the money from P.W2 and handed over a sum of Rs.4,000/- to P.W12. He compared the serial numbers of the currency notes with the currency note numbers mentioned in the Mahazar, which was prepared at the time of pre trap arrangement. It was found tallied.

14. He also requested the accused to remove his shirt. Another sodium bicarbonate solution was prepared and the shirt pocket was dipped. It also turned pink. It was collected in another container, labelled and sealed. Recovery Mahazar was prepared, wherein all the witnesses and the accused signed and further process was undertaken. A search was also made on the house of the



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appellant/accused, but nothing was seized. He submitted all the material objects before the Court and made a request. He also submitted an alteration report altering the offence to Section 13 (1) (d) of the Prevention of Corruption Act.

15. Further investigation was undertaken by P.W13, by name K.Kumaraguru, Inspector of Police, Vigilance and Anti Corruption, Madurai. He recorded the statement of the witnesses, made arrangements for sending the material objects for Forensic Science Laboratory examination. After receiving the report from the lab and after completing the formalities of investigation, he filed the final report on 03.09.2014 alleging that the accused has committed an offence punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

16. P.W1, by name, S.Velu, was the Sanctioning Authority, who passed the sanction order, after perusing the entire records and materials that have been placed before him. P.W3, by name S.Kalaimurugan, is the shadow witness, who corroborated P.W2 with regard to the pre trap arrangements. According to him, when he along with P.W2 went inside the office of the accused, the accused demanded a sum of Rs.4,000/- as bribe from P.W2. In pursuance of the aforesaid demand, P.W2 handed over Rs.4,000/- to the accused. The accused



accepted the amount, counted the same and put it in the left side shirt pocket.

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17. P.W4, by name K.R.Nirmala is the official witness, who participated in the pre trap arrangement and a witness to the events. She also corroborated P.W3 and P.W12 with regard to the pre trap arrangement as well as the trap process, arrest, recovery, test etc facts. P.W5, by name D.Paulraj, was working as Town Surveyor in Usilampatti during the relevant period of time. During that point of time, the accused was working as Surveyor. He is the witness to the events, which took place, when the police team arrived at the office.

18. P.W6, by name M.Aatheeswaran, was working as Special Sub Inspector of Police during that relevant point of time in the respondent office. P.W2 informed him that he has come there to lodge the complaint. He informed P.W12 and further attended the office, as mentioned above. P.W7, namely C.Thilagavathy was working as Assistant attached to the office of the Special Court, who has spoken about the receipt of the material objects etc facts.

19. P.W8, Chandra was working as Assistant Officer in Usilampatti Town. She has spoken about the arrangement of the police team and other facts as narrated above. Similarly, P.W9, M.Mahalakshmi was also a witness to the



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events. They took place in the office. P.W10, P.Sivaperumal, was working as Settlement Assistant in Usilampatti Town and Planning Office, who attended the request made by P.W2 for survey and granting of patta.

20. P.W11, D.Vijayalakshmi was working as Scientific Assistant in the Forensic Science Laboratory, Chennai and she has spoken about the examination of the material objects and the report. With the examination of P.W13, prosecution side was over and the accused was put on Section 313 of Cr.P.C. questioning. He denied the incriminating circumstances, which were spoken by the witnesses. As mentioned above, no witness and no document were examined and marked on his side.

21. After perusing the entire records and hearing the arguments on either side, the trial Court recorded the finding of guilt and sentenced the accused to undergo imprisonment as noted above, against which, this appeal has been preferred.

POINTS FOR CONSIDERATION:-

1) Whether the guilt of the accused has been proved beyond all reasonable doubt by the prosecution?



2) Whether the judgment of conviction and sentence that has been passed by the trial Court is sustainable?

22. The learned counsel for the appellant would straight away rely upon the evidence of P.W2, the *de-facto* complainant. The reason for him to make the preliminary argument is that P.W2 has not supported the case of the prosecution during the course of evidence. He turned hostile and was cross-examined at length by both sides.

23. Now, let us go to the evidence of P.W2 on this aspect. Reading of his evidence shows that he wants to shift the burden and blame upon one Paulraj, who is the Superior Officer of the accused. He has been examined as P.W5 on the side of the prosecution. Now, the evidence of P.W2 is to the effect that only at the instance or advise or demand that was made by P.W5, he thrust the money in the pocket of the accused on the particular date. He went on to say that Rs.5,000/- as bribe was demanded by P.W5 and after some bargain, it was reduced to Rs.4,000/- and P.W5 asked him to hand over the money either to the accused or some other person. Since he was not willing to bribe the officials, he lodged a complaint, but in the complaint, he has not stated anything about the demand that was allegedly made by P.W5. The complaint is to the effect that he



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approached the accused on the advise that was made by P.W5, since P.W5 was engaged in some other work. Only this accused demanded Rs.5,000/- stating that usually they receive Rs.5,000/- for surveying the land and making sub division orders. After some bargain, it was reduced to Rs.4,000/-. Even during the course of evidence, he has stated that he has not implicated P.W5 regarding the demand.

24. The explanation that has been offered by him is to the effect that only at the instance of P.W12, he has implicated this accused leaving the aforesaid Paulraj. So, the belated explanation that has been offered by P.W12 on this aspect is not at all accepted. Why he has implicated P.W5 is also not clear on record. On the date of the examination, P.W5 was already retired. So, there is some reason behind the implication. Now, whatever it may be, he has not stated anything before the Investigation Officer during the course of the investigation about the involvement of P.W5. So, shifting the burden or blame upon P.W5 is highly motivated. So, these nature of his evidence shows that he is not a reliable person. He went to on to say that no demand was made by the accused. Only Paulraj demanded the money. His evidence to the effect that he thrustured the money in the pocket of the accused is also not reliable and natural also.



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25. The next important aspect is that it is even admitted by P.W5 to the effect that on the basis of the request that has been made by P.W2, on 14.02.2014 itself, the property was measured by the accused. That was also intimated by him to P.W5 on the date itself. Only at that time, P.W5 demanded Rs.5,000/- for submitting the report. So, this is the second aspect, which goes against the case of the prosecution. The case of the prosecution, as mentioned above, is that only for the purpose of measuring the property and passing the sub-division orders, the demand was made on 14.02.2014. That was the first demand.

26. Now, in this context we will go to the evidence of P.W5. He would say that P.W2 approached him on 13.02.2014 and shown the acknowledgment. He advised P.W2 to come on the next day ie., on 14.02.2014 along with original documents to approach the accused. He would further say that on 13.02.2014 itself, he informed P.W2 that the accused will measure the property, since he was the Field Officer. As per his advise, the property was measured on 14.02.2014 itself. However, this important aspect has not been taken care either by the Investigation Officer or by the trial Court. So, when the first demand was made, it has not been properly brought on record either during the course of investigation or during the course of trial. How this important aspect missed the



notice of the trial Court is also not clear on records.

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27. From the evidence of P.W2 to P.W5 together, it is seen that on 14.02.2014, the property was measured and the report has been submitted by P.W5 to the Superior Officer for the purpose of passing the final orders. If it is really so, then the charge itself is not proper, since the investigation has not been taken on this important aspect. So, the case of the prosecution that there was an initial demand made by the accused on 14.02.2014 at about 03.00 pm., falls to the ground and has not been properly established.

28. Now, the next demand is on the date of trap i.e., on 17.02.2014 at about 11.15 am. P.W2, as mentioned above, did not support the case of the prosecution with regard to the demand on 17.02.2014. In his absence, the evidence of P.W3, shadow witness, is heavily relied by the prosecution. The learned Additional Public Prosecutor would submit that P.W3 is very categorical and clear in his evidence stated to the effect that the accused demanded a sum of Rs.4,000/- and that was also handed over by P.W2, in pursuance of the aforesaid demand. So, the question, which arises for consideration, is whether the evidence of P.W3 is enough to substantiate the prosecution case of demand on the date of trap. So, during the course of cross-



examination, he would state that in the place, where the accused was sitting, the seat of P.W5, Paulraj was available and apart from that, two or three staffs were also available.

29. Let us go to the evidence of P.W5. He would say that on 17.02.2014 at about 11.30 am., when he was doing his duty, a group of people suddenly entered into the office and they stated that the accused received the bribe amount from P.W2 and he was requested to be a witness to the events. Then he spoke about the sodium bicarbonate solution etc facts. He would further say that he did not notice whether the amount was received by the accused from P.W2. So, when we conjointly read the evidence of P.W5 as well as the evidence of P.W3, the shadow witness, the conclusion that can be reached is that absolutely the case of the prosecution that when P.W5 and other staff members were available in the place of occurrence, the accused demanded and received the amount is highly improbable. Not only P.W5 but also P.W2 has hidden the material facts. In such circumstances, it may not be proper to rely upon the uncorroborated testimony of P.W3 to conclude that on the date of the trap, the accused demanded Rs.4,000/- from P.W2 and accepted the same.

30. No doubt, the amount has been recovered from the accused, but in the



light of the contradictory statement that has been spoken by P.W2, recovery of money from the hands of the accused is not sufficient enough to convict the accused. Time and again it has been repeatedly held by the appellate Court more particularly in the recent judgment of the Hon'ble Supreme Court in the case of *N.Vijayakumar Vs. State of Tamil Nadu* reported in *[(2021)3 SCC 687]* that when demand of money has not been properly established by the prosecution, recovery of money alone will not prove the demand and acceptance as bribe. It is also seen that this is the consistent view of the Hon'ble Supreme Court right from the judgment of the Hon'ble Supreme Court in the case of *M.R.Purushotham Vs. State of Karnataka* reported in *(2015) 3 Supreme Court Cases 247*.

31. In the light of the aforesaid discussions, I am of the considered view that the prosecution has failed to prove the alleged demand and acceptance of bribe amount by the accused person. Even though the trial Court has held that the prosecution has proved the case of the demand and acceptance beyond all reasonable doubt on the basis of the evidence of P.W3, for the reason stated above, it requires interference. Accordingly, the judgment of conviction and sentence passed by the trial Court dated 04.10.2016 in Spl.C.No.32 of 2014 is set aside and the accused is acquitted from the charges that have been framed



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against him. The fine amount paid already, if any, shall be refunded to the appellant and the bail bond shall stand discharged.

32. This Criminal Appeal is allowed, accordingly.

Index : Yes / No
Internet : Yes / No
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29.06.2022

To

- 1.The Special Judge
for Prevention of Corruption Act Cases,
Madurai.
- 2.The Inspector of Police,
Vigilance and Anticorruption,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J.

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**judgment made in
Crl.A.(MD) No.401 of 2016**

29.06.2022