BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 21.04.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.167 of 2016

R.Sudarsan ... Appellant/Sole Accused

Vs.

State Rep.by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Sivagangai District.
(Crime No.5 of 2002) ... Respondent/Complainant

Prayer: Criminal Appeal has filed under 374(2) of the Criminal Procedure Code to call for the records relating to the judgment in Spl.Cc.No.7 of 2014, dated 28.04.2016, on the file of the Special Court for Prevention of Corruption Act Cases, (Sub Court), Sivagangai, and set aside the same.

For Appellant : Mr.M.Subash Babu

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

JUDGMENT

This Criminal Appeal is preferred against the judgment of conviction and sentenced passed by the Special Court for Prevention of Corruption Act Cases, (Sub Court), Sivagangai, in Spl.C.C.No.7 of 2014, dated 28.04.2016, by which, the appellant was convicted and sentenced to undergo 2 years of Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 6 months Rigorous 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.1000/-, in default, to undergo 6 months Rigorous Imprisonment for the offence punishable under Section 13(2), r/w 13(1)(d) of the Prevention of Corruption Act, 1988, 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 Commercial Inspector in Tamilnadu

Electricity Board, Salaigramam, Sivagangai Distrct, demanded a sum of Rs.500/- for the purpose of giving service connection to the brother-in-law house of P.W.2. In pursuance of the complaint lodged by him, a case was registered in Crime No.5 of 2002 by the respondent and a trap was laid while this appellant accepted the bribe amount of Rs.300/-. Based upon that, investigation was undertaken and a final report was also filed before the Special Court for Prevention of Corruption Act Cases, (Sub Court), Sivagangai, which took cognizance in Spl.C.C.No.7 of 2014 and framed the following charges against the accused.

3.**Charge against the accused person**:-

(i) The first charge against the accused person, appellant herein is that he was working as Commercial Inspector in the Tamilnadu Electricity Board, Salaigramam, Sivagangai. On 27.02.2002, he made an inspection, in pursuance of E.B services connection application given by one Karthikeyan and for the purpose of preparing the estimate, he demanded a sum of Rs.500/- from one Angusamy, who is the relative of the above said Karthikeyan and the appellant received Rs.300/- from him on 12.03.2002 at about 11.30 a.m. After receiving the amount, he handed over the same to one Susaimuthu and thereby, the appellant had committed the offence punishable under Section 7 of of the Prevention of Corruption Act, 1988.

(ii) The second charge is that since he demanded and accepted of bribe amount of Rs.300/-, he has committed criminal misconduct and thereby, he is liable to be punished for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4.On the basis of the complaint given by P.W.2, the defacto complainant, a case was registered. After laying a trap, the accused was arrested and after completing the formalities of investigation, final report was filed before the Trial Court, which was taken cognizance in Spl.Cc.No.7 of 2014, in which, charge was framed after completing the formalities by the Trial Court. The accused namely, the appellant herein denied the charges and claim to be tried.

5.In pursuance of the above said plea, the prosecution has examined 14 witnesses and marked 31 documents, apart from 9 Material Objects. On the side of the accused, none was examined and no document was also marked.

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

P.W.2 is the defacto complainant, who is a resident of Varavani. His brother-in-law's name is Karthikeyan. During the period of occurrence, the above said Karthikeyan was in Andaman and he built a tiled house in Keerakudi. Wiring work was done in the house through the Wiring Contractor called one Subramanian. For the purpose of applying for service connection, he prepared a form and sent same to the Andaman, wherein, the above said Karthikeyan put his signature. After receiving the form signed by the above said Karthikeyan, he along with the above said Wiring Contractor, handed over the form to the accused on 18.02.2002. The amount was also remitted on 19.02.2002. After 10 days, he made an enquiry with the above said Contractor Subramanian about the service connection. At that time, he told that the accused has delayed the process. So, he approached one Sekar, who was working as Assistant Engineer. He advised him to lodge a complaint before the Vigilance Department, Sivagangai District, and he also took him to the Vigilance office. As per the dictation made by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Sivagangai District, he wrote the complaint and made his signature. It was marked as Ex.P.3. He also stayed in the Office at night. On the next day Morning on 12.03.2002, he was called by the Deputy Superintendent of Police and at that time, two official witnesses were available. At the advise of the Deputy Superintendent of Police, he handed over Rs.500/-, which was 100 rupee notes. Phenolphthalein was smeared on the currency note. The pre-trap arrangement was made by P.W.11, who was working as the Inspector of Police in the Department during the relevant point of time. On the basis of the complaint given by P.W.2, he registered a case in Crime No.5 of 2002 for the offence under Section 7 of the Prevention and Corruption Act. On, 11.03.2002, at his request, two official witnesses were present. He collected money from P.W.2, which was 100 rupee notes to the value of Rs.500/-. He preferred a mahazar and also conducted the pre-trap arrangements with the Sodiun Bicarbonate Solution. After completing the formalities of trap laying procedure, he advised P.W.2 and other official witnesses to go to the office of the appellant and if money is demanded by him hand over the same and signal.

7.In pursuance of the above said advise, the police team started to the office of the appellant at about 10.15 a.m. They reached the office and as per advise, P.W.2 and other witness namely, Kurinchichezhiyan went to the office of the appellant. At about 11.30 a.m, they came out of the office and made a signal. Immediately, the police team went into the office and the accused was identified by P.W.2. Later, P.W.2 was directed to go out side. He prepared Sodium Bicarbonate Solution and asked the appellant to wash his left hand finger. It turned purple. He made enquiry as to the money. He told him that he did not receive any amount. Later, he informed that the money was handed over to one Susaimuthu. On enquiry, Susaimuthu told him that the money was given by the appellant to keep it and hand over the the same. He prepared a Sodium Bicarbonate Solution and asked Susaimuthu to dip his left hand finger and it turned purple. He handed over Rs.300/-. He compared the number in the note with that of the mahazar and found to be tallied. Again, he prepared another solution and dipped the shirts of accused and the above said Susaimuthu. It also turned purple. All the samples were collected in separate bottles and the same were sealed and labelled. He also prepared a mahazar for recovery of the above said Rs.300/- and also recovered Rs.200/- from P.W.2. He arrested the accused at about 03.00 p.m and the other formalities were carried on. He recorded the statement of the witnesses and prepared a rough sketch, mahazar and also submitted the material objects to the Court.

8.Further investigation was undertaken by P.W.14. He received the file on 12.03.2002 and recorded the statements of the witnesses, on various dates. After obtaining the sanction order, he laid the final report stating 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 201 IPC.

9.P.W.3, is a shadow witness, who attended the office of the respondent to assist the police in preparation of the trap and conducting the trap process. He would submit that along with P.W.2, as advised by the Inspector of Police, he went inside the office of the appellant and at that time, the appellant asked P.W.2 whether he has brought the money. The appellant received Rs.500/- and returned Rs.200/- to P.W.2 after receiving Rs.300/-. He also assisted the police for further process. He was also present in the Vigilance Police Station when the pre-trap arrangement was made.

10.P.W.4, was as Wiring Contractor. He completed the wiring work and asked P.W.2 to make arrangement for getting the service connection.

11.P.W.5 is the sister of P.W.2. She has stated that the since her husband was in Andaman, P.W.2 was making arrangement for getting service connection and at that time, he told her that the appellant had demanded Rs.500/- as bribe amount for making service connection.

12.P.W.6, was working as Assistant Engineer, in Ilayankudi. He was also in-charge of Salaigramam, Sivagangai. After hearing the arrest, he reached the office and signed in the Mahazar.

13.P.W.7, who was working as the Revenue Inspector, during the relevant point of time. He made an entry in the application, which was given by P.W.2 on behalf of the above said Karthikeyan. Estimate was prepared by the accused after visiting the place and documents have been recovered from his office by the respondent.

14.P.W.8, was working as an Assistant Executive Engineer in Ilayankudi. On 12.03.2002, at about 04.30 p.m, the first respondent came to the office and made an enquiry about the estimation, which was prepared by the appellant.

15.P.W.10 was working as Assistant, Forensic Science Laboratory, Chennai, who examined the solution and also sent the report.

16.P.W.13, was working as Revenue Superintendent in Electricity Board of Salaigramam, Sivagangai. On 12.03.2002, at about 11.00 a.m, the Vigilance Police arrested the accused and verified the amount available with Susaimuthu.

17.With the examination of these witnesses, prosecution had closed the evidence and the appellant was put under Section 313 Cr.P.C questioning. The appellant denied the evidence of the prosecution witnesses.

18.There was no witness examined and no document was marked as stated above on the side of the accused.

19.So, after hearing the prosecution and the accused, the Trial Court recorded the finding of the conviction and sentence as noted above.

20.Against the conviction and sentence, this appeal has been preferred by the appellant.

21.Heard both sides.

22.The appeal is against conviction and sentence. We shall straightaway go to the evidence of P.W.2, who is the defacto complainant. Because, the appellant heavily relied upon the evidence of P.W.2 for the purpose of argument that absolutely prosecution has failed to bring home the guilt. P.W.2 has completely supported the case of the appellant, even during the course of chief examination. From the preamble portion, it is seen that P.W.2 was making arrangements for the purpose of getting electricity service connection to the house, which was built by his brother-in-law namely, Karthikeyan. The Wiring Contractor, Subramanian has also corroborated the evidence of P.W.2 to some extend, wiring work etc., The amount, which was demanded for getting service connection was also remitted and it is not under dispute.

23.Even P.W.5, who is the sister of P.W.2, whose husband was in abroad, has stated that P.W.2 was making the arrangements. But, regarding the demand of bribe amount, P.W.2 has stated that no such demand was made by the appellant. He lodged a complaint only on the advise of one Sekar, who was working as Assistant Engineer. He also preferred a complaint as per the dictation of the Deputy Superintendent of Police, who was present in the Vigilance Office at the relevant point of time. So, this part of his evidence shows that he wanted to disown the complaint.

24.He proceeded further to the effect that as advised by the Vigilance Police, they reached the office of the appellant, on 12.03.2002 along with P.W.3, Kurunchezhiyan. He went to the office and at that time, he was not available and after some time, he came there. At that time, he gave the money to the appellant. But, he did not receive it. So, he put the money in his pocket and at that time, Rs.200/- slipped to the ground. He took the above said Rs.200/- and came out of the office and made a signal as advised by the Police. So, this portion of his evidence shows that he was not supporting the case of the prosecution with regard to the acceptance of bribe. So, the demand as well as the acceptance as stated in the charge was not supported by the evidence of P.W.2. So, he was treated as a hostile witness.

25.Cross-examination was done by both sides. From the cross-examination of both sides, it is seen that P.W.2 was not telling the truth before the Court, after lodging the complaint with full knowledge and with full possession of conscious mind. He has gone against his own statement, not only in the complaint, but, also during the course of investigation. He completely denied the entire trap preparation and trap proceedings. Not only that he also stated that only the above said Subramanian, who is the Wiring Contractor took all the steps and arrangements for securing service connection. But, P.W.4 Subramanian has denied such fact. P.W.2 further states that he never met the appellant regarding the service connection. Only the above said Subramanian contacted the appellant and the appellant had never demanded any bribe amount from him.

26.The learned Additional Public Prosecutor at this stage would submit that he was made to turn hostile by the appellant for some reason. What is the reason for P.W.2 to turn hostile is not available on record. But, he would rely upon the evidence of P.W.5 for the purpose of arguments that P.W.2 can be disbelieved since he informed the demand of bribe by the appellant to P.W.5, the sister.

27.As mentioned above, P.W.5 stated that P.W.2 informed her that the appellant demanded Rs.500/- as bribe amount. So, the learned Additional Public Prosecutor would submit that the evidence of P.W.5 with regard to the demand is supporting the prosecution case. But, when P.W.2 himself turned hostile during the course of evidence, the hearsay evidence of P.W.5 with regard to the above said demand of bribe by the appellant cannot be relied on and taken into account.

28.The contention on the part of prosecution that the evidence of P.W.5 can be taken into account for the purpose of proving the fact of demand cannot be accepted. If at all the evidence of P.W.5 can be relied only if it is brought under the definition of *res-gestae*. But, P.W.5 was not very particular about the date and time of the information. So, it is seen that it was not a contemporaneous information.

29.With regard to the demand and acceptance, the prosecution heavily relied upon the evidence of P.W.3, who is the trap witness.

As mentioned above, at the request made by the Trap Laying Officer, he visited the office of the respondent on 12.03.2002 and throughout the pre-trap preparation, he was available in the office and assisting the police team. He would say that as advised by the police, along with P.W.2, he entered into the office of the appellant at about 10.45 a.m. At that time, he was not available. At about 11.00 a.m, again, they went to the office and after some time, the appellant came there and he enquired P.W.2 whether he has brought Rs.500/- and at that time only P.W.2 handed over the money to the appellant. He retained Rs.300/- and returned Rs.200/ and also told him that the estimate was already prepared and submitted to the higher officials on the previous day. They came out of the office and made a signal. At that time, the police team entered the office and further proceedings were undertaken as stated in the preamble portion. So, prosecution heavily relied upon his evidence. This evidence can be relied only upon to the stage of acceptance of money by the appellant. But, as mentioned above, P.W.2 has stated that he only put the money in the pocket of the appellant. So, whether is it safe to rely upon the evidence of P.W.3 to find that the appellant had demanded money and accepted the same, is the question.

30.But, here, this Court wants to make a general observation. It is seen that in all cases of trap, the shadow witnesses are very uniform in their evidence that the accused enquired the defacto complainant whether they have brought the money, which was demanded by him. So, this is the universal statements of the shadow witness before the Court. It can be termed as a statement which has been routinely made before the Court by the shadow witnesses. So, whether any importance can be attached to his statement must also be found out in the circumstances of the case.

31.It is the case of the prosecution that the appellant after accepting the money from P.W.2, handed over the same to one Susaimuthu, who was working in the same office and money has been recovered only from the above said Susaimuthu. When enquiring the appellant said to have told that he handed over the money to the Susaimuthu. Susaimuthu gave a statement that without knowing the fact that it is bribe money, he accepted the money from the appellant for keeping safe. So, on that ground, no case was registered against the above said Susaimuthu. This Court is not in a position to understand the stand that was taken by the prosecution. On what ground, the Investigating Officer came to the conclusion that Susaimuthu was not at all involved in the offence and without knowing the nature of money, he accepted the same for keeping it safe is highly unbelievable one. The reason being that the above said Susaimuthu as well as the appellant seats are adjacent. This evidence would show that there was no much of public movement in the office at that time. So, Susaimuthu would have witnessed all the occurrence said to have taken place in the office. Because as mentioned above, his seat is also located near to the appellant. So, the above said Susaimuthu would have witnessed the demand and acceptance of money by the appellant. But, no proper statement was recorded from him. He was not even examined as a witness. The reason of non examination of the above said Susaimuthu as a witness during the course of trial process is not stated by the prosecution.

32.How this important aspect escaped the notice of the Trial Court is not understandable. The Trial Court has heavily relied upon the evidence of P.W.3 for recording the findings of the conviction. The statement of the above said Susaimuthu is also contradicted by the evidence of P.W.13. He stated that when he was working as Revenue Supervisor, the Susaimuthu was also working under him as an Assessor, who has stated that on that particular date, both himself and the above said Susaimuthu were engaged in collecting money from the public. On the date also, there was heavy public movement. So, in such circumstance, the prosecution story that Susaimuthu received the money without knowing the occurrence, is not believable one.

33.In the light of the above said circumstances, I am of the considered view that it is not safe to record a findings of guilt against the appellant.

34.It is settled law that unless demand is proved, consequently, mere recovery of money from the accused will have no consequence. Here, this is even worst case. Because the amount was not recovered from the accused, but, from the above said Susaimuthu. So, even the recovery of money in this case will not have any effect.

35. Following the judgment passed by the Hon'ble Supreme Court of India in the case of **P.Satyanarayana Murthy Vs. The Inspector of Police and others (Crl.A.No.31 of 2009** and the judgement passed by this Court in the case of **P.Mani Vs. State of Tamil Nadu (2021 STPL 660 Madras)**, the conviction and sentence that has been passed by the Trial Court requires interference.

36.Accordingly, the appeal is **allowed** and the conviction and sentence passed by the Special Court for Prevention of Corruption Act Cases, (Sub Court), Sivagangai, in Spl.Cc.No.7 of 2014, is set aside. The accused/appellant herein, is acquitted from all the charges that have been framed against him. The bail bond, if any, executed by the appellant shall stand cancelled and the fine amount, if any, paid by him, shall be refunded forthwith.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

dss

To

1.The Special Court for Prevention of Corruption Act Cases, (Sub Court),
Sivagangai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
1. The Principal District Judge,
Sivagangai.

2. The Chief Judicial Magistrate,
Sivagangai.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-20661[F] dated 22/04/2022)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-21000[F] dated 25/04/2022)

ORDER MADE IN
Crl.A(MD)No.167 of 2016
21.04.2022

PKP/01.06.2022/9P/8C