BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.11.2021
Date of Judgment	11.02.2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.178 of 2016

State of Tamil Nadu rep. by
The Public Prosecutor,
High Court,
Madras-600 104.
(V & AC Theni, Crime No.1/2008) : Appellant/Complainant

Vs.

S.Balasubramani : Respondent/Accused

Prayer: Criminal Appeal is filed under 378 of the Criminal Procedure Code to set aside the judgment of acquittal of the respondent/accused passed by the Special Court for Trial of Prevention of Corruption Act (Chief Judicial Magistrate Court), Theni) in Spl. Case No.2 of 2014, dated 28/01/2016, convict and sentence the respondent/accused of the charges framed against him.

For Appellant : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For Respondent : Mr.Ramakrishnan
for Mr.R.Diwakaran

J U D G M E N T

This Criminal Appeal is preferred against the order of acquittal passed by the Special Court for Trial of Prevention of Corruption Act (Chief Judicial Magistrate Court), Theni), in Spl. Case No.2 of 2014, dated 28/01/2016.

2.**The case of the prosecution in brief:-**

The respondent, who is the accused was working as C1 Assistant in the Municipal Corporation Office, Bodinaickanur. He demanded Rs.5,000/- from the de-facto complainant as bribe for the purpose of preparing the bill for payment to the mother of the de-facto complainant T.N.Palaniammal. The above said Palaniammal was working as a Sweeper in the Bodinaickanur Municipality. A specific demand was made from 3/3/2008 to 08/03/2008 and in pursuance of the above said demand, the de-facto complainant lodged a complaint, which upon, trap was also laid and the respondent was arrested red handed on 12/03/2008. He admitted the demand and acceptance of bribe amount of Rs.5,000/- from the de-facto complainant. As per the trap that was laid by the police, he was remanded to custody. Pursuant to the same, charge sheet has been filed before the trial court and it was taken on file in Special Case No.2 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Theni.

3.**The facts narrated from the evidence of the prosecution witnesses can be briefly summarized as follows:**-

PW2 is an auto driver by profession and residing in Bodinaickanur. His father by name Nagendran was working as a Sweeper in the above said Bodinaickanur Municipality. He died in 1988. Subsequent to the above said incident, his mother by name Palaniammal was appointed on compassionate ground. Later after retirement, she was receiving pension. During the life time, she was entitled to get arrears amount of pension. So in respect of the above said arrears amount, he along with her mother contacted the accused person. He directed him to get the bill prepared by one Dwara Krishnan. So on 07/01/2008, he contacted the above said Dwara Krishnan for the purpose of making the calculation. As per the calculation made by the above said Dwara Krishnan, totally, Rs.49,000/- was to be paid as arrears. He also prepared the bill for the above said arrears amount and handed over to him. One bill was sent to the Internal Audit Department and another bill was handed over to the accused. The accused asked him to come after a week. After 10 days, he contacted, he again asked him to come after 20 days. Upon the instructions given by the Commissioner of Municipal Corporation, again they contacted the accused and he demanded Rs.5,000/-, on 03/03/2008. So he visited the office on 07/03/2008 on that date, the accused was not available in the office. Again on 08/03/2008, he went to the office and contacted him. Again he demanded money. But he had no intention to give money as bribe. On 12/03/2008, a complaint was lodged with the police. Subsequent to the above said complaint, preparation for trap was made. So for the purpose of assisting the trap, one Murugesan and Sudandiran were called and also introduced to him. Test was also undertaken. He was also instructed to hand over the money to the accused and after handing over the same, he must give signal. A mahazar was prepared on the basis of the above said complaint. They went to the Municipal Corporation at about 10.30 am. He went to the office along with the above said Murugesn. At that time, he was not available. Later, he came and asked him whether they brought money as demanded by him. He has stated that there is a crowd in the area and asked him to come at 4.00 pm. Again they visited the office at 4.15 pm. At that time, the accused demanded Rs.5,000/- and that was given by him. On seeing the signal by him, the police team came to the place and further formalities took place.

4.PW3-Murugesan, who accompanied the de-facto complainant as per the direction given by the police was also present. As stated by PW2, on the previous date, when preparation for trap was made, demand was made by the accused, he was present along with PW2.

5.PW5 was working as Inspector of Police in the Vigilance and Anti-Corruption Department on the particular date. He received the complaint from the de-facto complainant namely PW2 and registered a case in Crime No.1 of 2008 under section 7 of the Prevention of Corruption Act, 1988. So on the basis of the complaint given by him, he took several efforts and invited the independent witnesses and in their presence, further formalities were taken as per the procedure and law. He also instructed PW2 to give a signal, when the accused receive the bribe amount. On the basis of the above said plan, at about 10.30, they went to the Municipal Corporation Office and there stationed the vehicle, from that place PW2 and PW3 went to see the accused as per the plan. As stated above PW2 went to the office, the accused was not present in the office and at about 4.30 pm, again they visited the office and as narrated by PW2, subsequent events took place. They arrested the accused red handed and test was also undertaken. As per the procedure, further formalities were carried on. Test also proved positive. He also handed over the money by taking it from the right hand pant pocket. They compared the same with the mahazar, which was prepared in the earlier occasion in the office under Ex.B3. They also recovered the pant from the accused and that was also sent for test. It also proved positive and the mahazar was prepared for the above said process. Later they also inspected and searched the house of the accused and nothing was seized or recovered. Further investigation was undertaken by PW6, on 14/03/2008 and recorded the statement of the witnesses and made efforts for sending the recovered articles for the forensic science laboratory for examination. After completing the formalities of the investigation, final report has been filed on 20/05/2009, charge sheeting the accused for the offence under section as stated above.

6.PW4 was the scientific assistant attached to the Tamil Nadu forensic science laboratory, Chennai. She examined the articles, which were sent by the police. She has also submitted the analysis report.

7.After examination of the prosecution witnesses was overt, the accused was subjected to 313 Cr.P.C examination and he denied all the allegations that have been made against him, during the course of their evidence. He has also submitted written statement of defence. No defence witness was examined on his side.

8.The trial court, after examining, perusing the evidence and documents, acquitted the respondent/accused on the ground that no formal complaint was made by PW2 to the higher authorities of the accused. He remained silent for about a week and the competent authority to sanction the arrears amount is only the Commissioner of Municipal Corporation and the accused was not authorised to sanction the amount. So there was no occasion for the accused to demand the money. When there is doubt with regard to the place where the alleged amount was received by the accused, there is a contradiction with regard to the pant pocket, in which the amount was put by the accused; Similarly, the pant was also not subjected to the forensic science laboratory examination; He was also found that the accused left hand was amputated upto the wrist portion. So PW2 evidence was disbelieved that the accused could not have received the money through the right hand and put him in the left hand pant pocket.

9.Similarly, the prosecution also failed to prove from where the accused was arrested, because of the contradiction in the evidence of PW3 and PW5.

10.So challenging the above said findings and assailing the judgment of acquittal, this criminal appeal has been preferred on the ground that the findings recorded by the trial court are against the evidence on record and small contradictions have been taken into account by the trial court to disbelieve the evidence of the prosecution witnesses; PW2 and PW3 clearly narrated the sequence of events; absolutely, there is no record to disbelieve the evidence; there is no reason for the de-facto complainant to falsely implicate the accused person; the trial court also failed to analysis the oral and documentary evidence in a right prospective.

11.Heard both sides.

12.It is an unfortunate case of basic servant of the Municipal Corporation. It is noted that the mother of the de-facto complainant was working as a Sweeper and later retired and receiving pension. Demanding the arrears amount, she made a claim for the purpose of sanctioning.

13.The learned Additional Public Prosecutor, at the out set has relied upon the judgment of the Hon'ble Supreme Court in the case of *Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi [(2020)2 SCC 88]* for the purpose of argument that the demand as well as acceptance has been proved beyond reasonable doubt, minor contradiction in the evidence of the prosecution witnesses need not be taken into account. Per contra, the power of the appellate court as well the principle that is governing in the case of appeal against the acquittal. The learned counsel for the respondent/accused by pointing out the latest judgment of the Hon'ble Supreme Court in the case of ***N.Vijayakumar Vs. State of***

Tamil Nadu [(2021)3 SCC 687] has been relied upon. In that case, it has been held in para 20 as follows:-

> *"... By considering the long line of earlier cases this Court in the judgment in the case of Chandrappa & Ors. v. State of Karnataka (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under :*
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> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge :*
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> *(1)An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2)The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise Crl.A.@S.L.P.(Crl.)Nos.4729-30 of 2020 of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
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> *(3)Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5)If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14.In the light of the above two judgments, let us proceed to discuss the factual aspects.

15.Now the learned Additional Public Prosecutor would submit that the bill was prepared as per the direction of the accused by the retired staff. Two bills were prepared. One was sent to the Local Audit Department, Chennai and another bill was handed over to the accused for the purpose of process.

16.According to the prosecution, the respondent/ accused demanded Rs.5,000/- for the purpose of completing the official formalities. Now the learned Additional Public Prosecutor would submit that PW2 was categorical and clear in his evidence that only the accused has demanded the bribe amount of Rs.5,000/- on the previous occasion and that was also handed over to him as per the trap that was laid. But during the course of cross examination, some supporting facts have been elicited from the prosecution witnesses, apparently by winning over them. For this purpose, he draw the attention of this court that the chief examination of PW2 was over on 12/12/2010 after a lapse of two years, was recalled and cross examined.

17.On hearing this argument, the learned counsel appearing for the respondent/accused would submit that originally the Chief Judicial Magistrate, Theni, was the Special Judge to try the offence. Later on the point of jurisdiction and after establishing the Special Court exclusively for trial of Prevention of Corruption Act, the trial was transferred to the Special Judge, Madurai and only after the transfer, he was recalled and cross examined. So according to the respondent/accused, absolutely there is no bad intention on the part of the accused in not cross examining them on the date of the chief examination. Now whatever it may be, according to the learned Additional Public Prosecutor, absolutely there is no contradiction in the statement of PW2. PW2 has categorical that he has also supported by PW3, who accompanied him, at the time of arrest and seizure. So according to the learned Additional Public Prosecutor, absolutely there is no contradiction; It is a clear case of demand and acceptance of bribe and the prosecution has proved the same.

18.Per contra, the learned counsel appearing for the respondent/accused would submit that the very fact that the respondent/accused was not having hand below the wrist in the left hand has been clearly established before the trial court. PW2 has stated that the accused received the bribe amount by right hand and put it on the left pant pocket. So this improbability weighed much upon the mind of the trial court for disbelieving the evidence of PW2.

19.But the learned Additional Public Prosecutor would submit that it is a minor contradiction, which does not have impact upon the main event. It is also submitted that the place where the amount was accepted is also not established. No doubt that there is contradiction with regard to the place where the amount was demanded and accepted and where the accused was arrested.

20.According to the learned Additional Public Prosecutor, these are only minor contradictions, which should not be given any importance at all. No doubt, these are the minor contradictions, But the fact remains that when the bill was prepared by the retired staff, the allegation that the respondent demanded bribe for the purpose of clearing the arrears of pension amount creates doubt. Because, on the earlier occasion, there was a delay on the part of the accused person in processing the bill, along with his mother made a complaint to the Commissioner of Municipal Corporation. He advised the accused person to process the same at the earliest. According to PW2, even after the above said instructions, the accused demanded the bribe. If really that was so, he would have brought the demand of bribe to the Commissioner of Municipality. This fact has been stated by the trial Judge to find that it is improbable and unbelievable. This court is not in a position to understand how the demand can be made in spite of specific advise by the superior officer, was not brought to light.

21.The learned counsel appearing for the respondent would submit that it is a clear case of victimization. Another important factor is that PW2 during the course of cross examination stated that after lodging the complaint and after directing preparation in the Vigilance Department for the trap, he along with his mother only went to the Municipal Corporation Office and contacted the accused. But PW3 who accompanied PW2 to the Municipal Office and at that time, only demand was made by the accused, PW3 was very categorical in his evidence to the effect that on that date, he did not see the mother of PW2, this also been found out by the trial court and this important fact cannot be taken as a minor contradiction. This piece of evidence of PW2 and PW3, if taken together, then it will make the evidence of both of them unbelievable with regard to the demand and acceptance.

22.Similarly, there is contradiction with regard to the place where the amount was accepted. PW2 has stated that when they visited the Municipal Corporation Office at about 4.45 pm on 02/03/2008, the accused was coming in the opposite direction and only at that time, he demanded and accepted the amount. PW3 has stated that the amount was received by the accused persons sitting in the seat and only at the time, arrest was made. So with regard to the place also, there is a contradiction, which is material in nature.

23.According to the learned Additional Public Prosecutor, even though the contradiction with regard to the place of occurrence, the acceptance of money has been categorically proved by way of recovery and arrest. Phenolphthalein test also proved positive. But here again, one important fact that has been brought to the notice of this court is that it is a clear instruction to the Vigilance Department officials not to carry the Phenolphthalein powder at the time of trap. The reason for the said instruction has also been explained by PW5. He would state that since Phenolphthalein powder can be used for preparing the solution the guideline has been given. But contrary to this specific guideline, there is evidence on the side of PW2 to the effect that Vigilance Department officials carried with them, the powder, which was used for the purpose of preparing the solution at the time of trap arrangement that was made in the Vigilance Office. So absolutely there is violation of the above said guideline and when that is being so, no importance can be given with regard to the positive that was shown by the Phenolphthalein test. So violation of the mandatory guideline is more sufficient for disbelieving the prosecution version. An explanation has been offered by the accused to the effect only for the purpose of victimizing him, since he refused to process the bill that was prepared by the retired staff, the case was foisted, PW2 thrusted the money in his pocket only at that time he was arrested.

24.As pointed out by the learned Additional Public Prosecutor, when the arrest and recovery of money is not disputed by the accused, it is for him to satisfactorily explain the innocence, in view of the specific presumption available in favour of the prosecution. But I am unable to accept the above said line of argument for the simple reason that when the demand is not proved, naturally the possession of money and recovery alone is not sufficient to convict the accused and this position as been elaborately discussed and pointed out by the Hon'ble Supreme Court in the case of ***N.Vijayakumar Vs. State of Tamil Nadu [(2021)3 SCC 687].***

25.Pointing out the said judgment, the learned counsel appearing for the respondent/accused would submit that when the view was taken by the trial court is the possible view, only when a strong case is made out by the prosecution, reversing the same by this court should be undertaken.

26.The Hon'ble Supreme Court has went in detail with regard to the term 'possible view'. Possible view has been defined as an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may not be termed as erroneous or wrong by a superior court upon a mere disagreement.

27.But here, on going through the entire evidence on record and the judgment of the trial court, I am of the considered view that the view that has been taken by the trial court is the only possible view. This can not be termed as erroneous view, in view of the material contradictions that are available in this case. So mere recovery of money from the accused will not prove the demand. In view of the latest position, the judgments that have been cited by the learned counsel counsel for the respondent/accused, it need not be gone into at length and the power of the Appellate Court in case of judgment of acquittal has been elaborately discussed in the above said judgment, which are fundamental principle, need not be reproduced.

28.Now coming back, as this court found that the contradictions that are available in this case are serious in nature, but also material contradictions have been brought on record. In the light of the above said contradiction, as mentioned above, the view that was taken by the trial court in acquitting the accused cannot be termed as 'erroneous view' and it can be termed as 'possible view'. The possible view is also acceptable to this court. So, I find no merit in this criminal appeal.

29.In fine, the criminal appeal fails and the same is **dismissed.**

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Special Court for Trial of Prevention
of Corruption Act
(Chief Judicial Magistrate Court),
Theni.

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

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.R.DIWAKARAN, Advocate (SR-5655,5846[F] dated 11/02/2022)

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11.02.2022

RK(04/05/2022) 10P 7C