BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 04/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.189 of 2016

S.Sivakumar : Appellant/Sole Accused

Vs.

State through
The DSP, Vigilance and Anti Corruption,
(V & AC), Ramanathapuram,
For the DSP, V & AC, Tirunelveli,
(Crime No.7 of 2002)

Prayer: Criminal Appeal is filed under section 27 of the P.C Act r/w section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence passed against the appellant by the Special Judge for Prevention of Corruption Act cases, Tirunelveli, in Special Case No. 31 of 2014 on 13/05/2015.

For Appellant : Mr.P.Ezhil Nilavan

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

J U D G M E N T

This Criminal Appeal is preferred against the order of conviction and sentence passed against the appellant by the Special Judge for Prevention of Corruption Act cases, Tirunelveli, in Special Case No.31 of 2014, dated 13/05/2015.

2.**The case of the prosecution in brief, as narrated through the evidence**:-

PW2 is the de-facto complainant. He is a resident of Puliyankudi Village. He constructed a house in the above said village in 2003. He was granted service connection in serial No.179, on 18/01/2005. The Tariff was assigned as '1'. He was continuously paying the charges for 10 months. All of a sudden, it was changed as Tariff No.5. So he made a request to the Junior Engineer, Tamil Nadu Electricity Board, Puliyankudi, on 29/04/2005. But there was no action on his request. So he made a personal enquiry. At that time, he was told that his request was recommended for further action by the Assistant Executive Engineer.

3.In pursuance of the above said advise, on 10.01.2006, he approached the accused and made an enquiry. At that time, the accused demanded Rs.1,000/- for passing order. He also asked him to pay the same, on 12/01/2006. He went to the house and had a thinking. He was not willing to pay the bribe. So, on the next day morning, he went to the Vigilance Department office namely the first respondent herein and made a complaint in writing. In pursuance of the above said complaint, he also produced a document showing the service connection and requisition etc., which were marked as Exs.P1 to P4. The complaint is marked as Ex.P5. On the invitation made by the respondent police, one Sivasubramanian and Abubakkar Sidhik came to the office and they were introduced mutually by the Vigilance Inspector and subsequently, trap arrangements were made. The currency notes numbering about 2 in the denomination of Rs.500/- were handed over by him and the Vigilance Inspector made a preparation, smeared the currency notes with the sodium bicarbonate and demonstration was also undertaken and the trap was prepared and instruction was given to him to give a signal on demand and payment of money to the accused. As per Ex.P7, Mahazar, the entire team started from the Vigilance office and directly went to the accused office. As per the prior instruction and advise given, PW2 went along with the witness Sivasubramanian and contacted the accused. He made an enquiry and at that time, he asked PW2, whether he brought the money. PW2 handed over the money, which was received by the accused with two hands, counted the same and put it in his right hand Safari Shirt pocket. PW2 came out of the office and made a signal. On seeing the signal, the police party, the witness Abubakkar Sidhick came to the office. PW2 identified the accused and he was sent out. On the next day, he was examined by the Deputy Superintendent of Police.

4.As narrated by PW2, PW3 Sivasubramanian on the invitation made by the respondent police, visited the Vigilance office at 2.30 pm, on 12/01/2006 and as narrated by PW2, pre-trap arrangement examination was undertaken as per the procedure. He also signed in the mahazar, that was prepared showing the currency notes etc. As advised and as instructed by the Inspector of Police, he went along with the police team to the office of the accused and as instructed and advised, he accompanied PW2 to the office of the accused and at that time, the accused demanded money from PW2 as to whether he brought the same. PW2 handed over the money and the accused received the same and put it in the pocket and further proceedings were undertaken by the Inspector of Police, who was examined as PW4. PW4 corroborated PW2 and PW3 over the pre-trap arrangement and other proceedings as per the procedure.

5.After handing over the money and after showing the signal, PW4 went inside the office of the accused along with the police team and the accused shocked to see them. He prepared sodium bicarbonate solution and asked the accused to dip his right hand finger. The solution turned pink colour. Similarly in the another solution, his left hand fingers were also directed to be dipped and it turned pink colour. PW4 collected the samples and sealed it. On enquiry, the accused admitted that he received the amount and handed over the currency notes. PW4 compared the currency note numbers with the observation mahazar already prepared in the Department. It found tallied. The shirt was also taken and that was also dipped into the sodium bicarbonate solution. It also turned pink colour. That solution was also collected, sealed and labelled. On enquiry, the accused further informed that he forwarded the application of PW2 to the concerned Officer after making recommendation. On going through the records, it was found that the application was received on 29/09/2005. Later the accused was arrested and remanded to judicial custody.

6.Further investigation was undertaken by PW15, the then Deputy Superintendent of Police. On information from the Inspector of Police Rajamohan, he went to the office of the accused, arrested him and made a search in the house of the accused, took up further investigation, recorded the statement of the witnesses, submitted the documents as well as the samples before the concerned court for further process. PW16-Joseph took up the further investigation and during the course of further investigation, he was told that the request made by PW2 for transfer of tariff was found missing. He was also informed that the accused is the main culprit for having hidden the request of PW2. So he further recorded the statement of the witnesses. After completing the formalities of investigation, he filed a final report, on

21/11/2007 stating that the accused has committed the offences under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and section 201 IPC.

7.PW5 was examined on the side of the prosecution to show that samples were collected during the course of trap. PW6 has spoken about his role with regard to the request that has been made by PW2. He was working as a Commercial Assistant in TNEB during the relevant period. The application that was made by PW2 was forwarded to him by the accused and he made a special visit and prepared the estimate and submitted the proposal. After the approval, it was forwarded to the Assistant Executive Engineer. From PW2, Rs.1,500/- charge was collected and again it was submitted to the Assistant Executive Engineer. After completing the official formalities, recommendation was made by the Assistant Executive Engineer to change the tariff. But he has not received any official order from the Assistant Executive Engineer. So during that time, it was pending before the Assistant Executive Engineer office.

8.PW7 has spoken about the recommendation that was made by him, on the basis of the report submitted by PW6 to change the tariff. But later after 15 days, the same was returned for making fresh inspection. On enquiry made by PW2, he informed that he already made a recommendation to the Assistant Executive Engineer for changing the tariff. On 10/01/2006, he made conversation and during the conversation with the accused, he asked him to send a proposal so that the tariff can be changed. He has not received the official order.

9.PW8 has spoken about the entry that was made by him in the office register and about the request made by PW2. In the volume, serial No.14, he made an enquiry. But in the enquiry, the Assistant Executive Engineer has made a note that he has returned the proposal.

10.PW9 has spoken about the occurrence that took place, on 12/01/2006. At that time, at about 5.00 am, he was talking with the accused. At that time, PW2 came to the office and on enquiry, he was informed that PW2 visited the office with regard to the request of change of tariff. But PW9 was treated hostile.

11.PW10 has spoken about the work that was undertaken by him in the house of the accused and he also signed in the inspection report.

12.PW11 has spoken about the inspection that was made by him, on 07/03/2006 in the house of PW2. At the time of inspection, he found that the service connection given to the house of PW2 was only for domestic purpose. So, he made a recommendation to change the tariff, based on which, the Assistant Executive Engineer, Puliyankudi ordered to change the tariff. The file, which was attended by him was marked as Ex.P18.

13.PW12 has spoken about the estimate that was submitted to the Assistant Executive Engineer, over the transfer of tariff. According to him, the proposal of tariff was sent, on 27/11/2004. The letter was returned by the Commercial Inspector, Mari Durai, in which the accused, who was working as the then Assistant Executive Engineer signed and that was approved by the then Assistant Executive Engineer by name Balaraman.

14.PW13 has spoken about the inspection that was made by him, on the basis of the recommendation made by the Assistant Executive Engineer Kala, over changing of tariff.

15.After completing the prosecution witnesses, the accused was put up under section 313 Cr.P.C proceedings and he denied the incriminating evidence that were let by the prosecution. On the side of the accused, one Kalyanasundaram was examined as DW1 and he has stated that during the relevant time, he was working as Assistant Executive Engineer (Distribution) and he knew the signature of the accused. Ex.D1 is the letter written by him, on 21/02/2005. It was informed to him that PW2 used the electrical service connection for commercial purpose. So on that ground, he made a recommendation to take action. So the accused ordered to change the tariff to file. Ex.P24 is the entry that was made by him during his Inspector. During the course of investigation, he was also examined by the Deputy Superintendent of Police. With this the defence side evidence was over.

16.After hearing the argument of the prosecution and the defence and on going through the evidence on record, the trial court recorded the finding of guilt under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the accused was sentenced to undergo three years rigorous imprisonment for the offence under section 7 of the Act and the same period for the offence under section 13(2) r/w 13(1)(d) of the Act and in respect of the offence under section 201 IPC, he was acquitted.

17.Challenging the conviction and sentence, the accused as appellant is before this court by way of this criminal appeal.

18.Heard both sides and the records were perused.

19.The appellant/accused has been found guilty the charges under sections 7 and 13(2) r/w 31(1)(d) of the Prevention of Corruption Act. In respect of the offence under section 201 IPC, the trial court has recorded the finding of not guilt and he was acquitted. Against which, no appeal was preferred by the prosecution. So it stands as it is.

20.Now the charge under sections 7 and 13(2)(r/w 13(1)(d) of the Act alone is required to be discussed and answered.

21.It is not in dispute that the appellant was working as Assistant Executive Engineer at the relevant time in the Tamil Nadu Electricity Board in the office of Puliyankudi. But during the course of argument, the learned counsel appearing for the appellant has made an attempt to say that in the Department of Electricity Board, there is no such post of Assistant Electrical Engineer. There is no post like Divisional Engineer. However, it was not disputed by the appellant that at the relevant time, he was working as Assistant Executive Engineer. He has also not disputed that he dealt the request made by the PW2 for change of tariff from 5 to 1.

22.From the documentary evidence on record as well as the oral evidence, it is seen that originally, PW2 constructed a house in his village. So he was provided with electricity connection in respect of domestic use, which was coming under tariff '1'. During the course of inspection, as narrated in the preamble portion, he was found using the same for agricultural purpose only. So on the recommendation made by the officials, the accused has ordered to change the tariff from 1 to 5. Later, PW2 made a request to reverse the tariff by reconsidering the request, since according to him, he used the electricity connection for agricultural purpose only. So on the basis of the request, proceedings were undertaken to make a local visit, prepared the report, proposed approval etc. So these are all the official usual procedures, as has been narrated during the course of evidence. As mentioned in the preamble portion, we need not concentrate much upon the details with regard to the date of inspection, proposal and sanction date, etc. These things are not disputed and denied by the appellant. So, we can directly go to the main issue.

23.As per the charge, for making order to change, tariff from 5 to 1, the accused said to have demanded Rs. 1,000/- as bribe, on 10/01/2006. According to the prosecution, the request was pending from 20/07/2005. PW2 paid the amount on 12/01/2006 at about 5.20 pm in the office of the accused as per the demand.

24.A simple defence, that has been raised by the accused is that according to him, there was enmity between him and PW2, since on the previous occasion only he made the change of tariff from 1 to 5. According to him, this is the previous motive. The friend of the accused by name Eswaran gave a complaint against PW2, which was registered in Crime No.213 of 2013 for the offences under sections 294(b), 323 and 506(ii) IPC and the above said Eswaran is the friend of the accused. So because of the complaint also, he had enmity. But these two enmities, *prima facie* are remote. There is no evidence on record to show that the above said Eswaran made a complaint only at the instance of the accused and so PW2 was inimical towards the accused. The original tariff change was made by the accused and that is the reason for enmity. This is also not possible. The reason being that, it is usual official work undertaken by the accused, on the basis of the recommendation made by the Department officials, as narrated above. So naturally that would not create any enmity.

25.Now coming to the prosecution case, as mentioned earlier, the appellant/accused made a demand specifically, on 10/01/2016. Except the oral evidence of PW2, there is no corroborative evidence to sustain the prosecution case, the demand must be specifically proved.

26.As mentioned above, with regard to the demand, on 10/01/2006, except the oral evidence of PW2, there is no other corroborative evidence. So, we can skip that evidence. Next, the demand is on the date of trap, that is on 12/01/2006. According to the prosecution, PW2 and PW3 are categorical and clear in their evidence that as per the direction of the trap laying officer, they went inside the office of the accused. At that time, the accused demanded money and PW2 gave the money and that was accepted by the accused.

27.According to the defence, on the date of the above said alleged demand as well as acceptance, the file was already returned by him to make a fresh inspection. For that purpose, they would straightaway rely upon the entry made in the dispatch register (Ex.P14). The relevant entry is available in serial No.14, wherein we find that the date of receipt of the request is 29/07/2005. The date of inspection was made on the same day, namely 29/07/2005 and the fee amount of Rs.125/- was ordered to be collected. In the column, the approval signature was scored off and the accused made a note that the file is returned for want of field inspection report by the Assistant Executive Engineer. But the date is not available. From the endorsement, it is seen that the file was already returned for want of field inspection report. But as per the register, field inspection was undertaken, on 27/09/2005 itself. The date of sending the same to the accused is not available. But from the seal, we can find that it was sent to him before 21/04/2005.

28.Now coming back to the date of demand, on 10/01/2006, according to the defence, it was returned for want of field inspection report, on 31/01/2005 itself and so completely, there was no occasion for demanding bribe on 10/01/2006. Next demand on 12/01/2006. According to the accused, this important aspect was not noted by the sanctioning authority, who was examined as PW1.

29.The learned Additional Public Prosecutor would submit that no doubt, it was returned for want of field inspection report and final approval has to be made only by the accused. So, the file deemed to have been pending with him. So the demand that was made by him was natural. But on this specific point, the learned counsel appearing for the appellant/accused relied upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India through Inspector, CBI Vs. Purnandu Biswar [(2005)12 SCC 576].*** Even though in criminal cases, facts will differ, the appellant wants to draw the analogy from the above said facts. In that case also, on the date of demand, no proposal was pending with the accused for releasing the vessel. There is no charge by the prosecution that he was continuing the demand in respect of the order of release of the vessel on the date of payment. So on that ground, the entire prosecution was doubted. He wants to draw the very same analogy and make observation in this case also.

30.No doubt, PW1 has not taken note of this important aspect. Now, we will go to the evidence of PW1 on this aspect. He is very clear in his evidence that he has not seen the register. So this is the lapse on the part of PW1 in granting sanction. The Investigating Officer ought to have placed all the records for scrutiny. That was not done. But whether this will affect the entire prosecution case is the next question for consideration. We will come back to this issue later. Let us go to the pre-trap event.

31.PW2 has stated that on 12/01/2006, he went to the Vigilance Department office and lodged a complaint. The amount was received by PW4, the then Inspector of Police, attached to the Vigilance Department. PW4 would state that on 12/01/2006 at about 10.45 am, PW2 came to his office and lodged a complaint. He also registered a case, on the basis of the complaint given by PW2. During the course of cross examination, one important factor has been brought on record. The complaint was signed in English language. In the complaint, the initial 'K' has been scored off. So, at this juncture, the learned counsel appearing for the appellant/accused has made an argument that as noted above, there is no category or post as 'Divisional Engineer' in the Electricity Board. But in Ex.P5, he has mentioned that Sivasubramanian was working as Divisional Engineer. So according to the appellant/accused, he was not the person, who was holding the post of Divisional Engineer at that time. So according to him, he was misidentified. PW4 has given explanation to the effect that PW2 identified the accused. So, the argument on the side of the appellant/accused that there was misidentification is not acceptable.

32.Now coming back to the correction in the complaint, PW2 would say that for what reason, the initial 'k' was scored off, could not be remembered by him. So how the correction was made and who made the correction is not clear on record. It is nothing, but an un-authorised correction made by the complainant. It creates doubt, then who prepared the FIR and whether mistake has been committed and who recorded the statement of PW2, and whether on the basis of the statement of the complaint given by PW2, the FIR was registered, scored off and later, it was corrected as written complaint. So in the light of the correction, that has been made in the complaint, doubt has been created by the accused stating that no original complaint was given by PW2. Even though this is a small mistake, which has been done during the course of writing the complaint, it is seen that it is the un-authorised correction. PW2 is clear in his evidence that he has not made any correction.

33.Let us go to the evidence of PW2 on this aspect. It has been stated by him that he has not mentioned the initial of the accused. He simply mentioned his name and who made the initial and later, who scored off the initial was not known to him. It is not known whether this correction has been made without any authorisation or previous complaint correction. But instead of that, the correction has been initialed not by PW2, but by some other, probably PW4 would have made the correction both in the complaint as well in the FIR.

34.In case of criminal prosecution, the complaint is the foundation for initiation of the proceeding and it must be free from doubt, manipulation or corrections, etc. Correction can be made, if at all only by the author concerned and not by the Investigating Officer, police official or any other third party without the authorisation or consent of the complainant. Even though the identification of the accused is not questioned here, the un-authorised correction made in the complaint creates doubt, as to whether Ex.P5 is the original complaint, which was given by PW2. This case must be eye opener to the Police that they should not make un-authorised corrections in the complaint. So this court cannot take it, as lightly that it is a simple or small mistake and this court has to view it very seriously. How many persons, who made the corrections in the initial is also not known. This will amount to manipulation of the complaint, which is not permissible in the criminal prosecution. This manipulation itself is sufficient enough to throw the prosecution case out of the Court.

35.In view of the above manipulation of the original complaint, subsequent trap proceedings and the recovery of money from the accused deserve no merit. So on that sole ground, I am of the considered view that the entire prosecution case must be doubted.

36.Now coming back to the sanction order, PW1 has also failed to note the two factors on the date of the alleged demand and trap. The file was not available with him. He already returned the same. Without properly going through the main document, he has given sanction. So it shows that he has not applied his mind properly, scrutinized all the records and this does not satisfy the requirement of law, which is expected of an authority, who sanctioned the prosecution. On that ground also, the prosecution must fail.

37.Further perusal of the original complaint also shows so many corrections and some of the words namely complaint was lodged by him, has been scored off and in that place, it has been stated as a present complaint is given. In respect of this correction, there is no proper explanation on the part of the prosecution. The same person, who has made initial correction in the initial 'k' also made initial.

38.As mentioned earlier, PW4 was not in a position to inform the court the person, who made the corrections. As mentioned earlier, such sort of manipulation in the original complaint is not permissible under criminal justice delivery system, otherwise called as prosecutorial manipulations. As mentioned earlier, this correction should not be taken slightly as mere clerical mistake. Because PW2 was very categorical in his evidence that he prepared the original complaint in his house. Then how the corrections were carried out is not clear on record. Probably, it must have been corrected either after registration of the FIR or after the complaint given by PW2 by some other persons. As mentioned earlier, this goes to the root of the prosecution case and the prosecution has failed because of this manipulation. When the initiation of the proceedings is doubted, the subsequent event that is preparation of trap and trap proceedings etc., have also to be viewed as doubtful.

39.In the result, the criminal appeal is **allowed**; the conviction and sentences imposed on the appellant/sole accused is set aside and he is acquitted from all the charges. Fine amount already paid, if any, shall be refunded to him and the bail bond, if any executed, shall stand discharged.

04/04/2022

Index:Yes/No
Internet:Yes/No

er

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.

G.ILANGOVAN, J

er

To,

1.The Deputy Superintendent of Police
(Vigilance and Anti Corruption),
(V & AC), Ramanathapuram,
Tirunelveli.

2.The Special Court for Prevention of
Corruption Act cases,
Tirunelveli.

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

Crl.A(MD)No.189 of 2016

04.04.2022