



Crl.A.(MD) No.218 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.04.2022

DELIVERED ON: 13.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.A.(MD) No.218 of 2016

K.Murugan

... Appellant

VS.

State represented by
The Inspector of Police,
Vigilance and Anticorruption,
Madurai.
Crime No.8 of 2007

... Respondent

PRAYER:- This Appeal filed under Section 27 of PC r/w 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.29 of 2011 on 23.05.2016 and acquit the appellant.

For Appellant : Mr.V.Magendran

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



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JUDGMENT

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Challenging the judgment of conviction and sentence that has been passed by the learned Special Judge for Prevention of Corruption Act Cases, Madurai in Special Case No.29 of 2011 dated 23.05.2016, this Criminal Appeal has been filed.

2.The case of the prosecution is that the accused was working as Firka Surveyor in the Melur Taluk Office, Madurai during the relevant period. He demanded a sum of Rs.12,000/- as bribe for measuring the property, which belongs to P.W2 and his brothers. In pursuance of the aforesaid demand, after negotiation, it was reduced to Rs.6,000/-. After the aforesaid amount of Rs.6,000/-, the initial amount of Rs.3,000/- was received and accepted by the accused on 17.08.2007 at about 11.40 am.,

3.On the basis of the complaint given by P.W2, a case in Crime No.8 of 2007 was registered for the offences punishable under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. After pre-trap arrangement, actual trap was laid. As stated above, on 17.08.2007, the accused demanded and accepted a sum of Rs.3,000/- as bribe amount. He was arrested and subsequent proceedings were undertaken. After completing the formalities of investigation,



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final report was filed, which was also taken cognizance in Spl.C.No.29 of 2011 by the Special Court for Prevention of Corruption Act Cases, Madurai and after completing the formalities of supplying the copies of the final report, the following charges were framed against the accused, who is the appellant herein.

i) The accused initially demanded a sum of Rs.12,000/- for measuring the property on 17.08.2007. After negotiation, it was reduced to Rs.6,000/-. A part of the amount ie., Rs.3,000/- was demanded and accepted by the accused on 17.08.2007 at about 11.40 am., and thereby, he has committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

ii) Since the accused has demanded and accepted a sum of Rs.3,000/- as bribe for discharging his official duty, he has committed the offence punishable under Section 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988.

4.The accused denied both the charges and claimed to be tried. Trial was undertaken, by which 11 witnesses have been examined and 20 documents were marked on the side of the prosecution apart from 6 material objects. On the side of the accused, 2 witnesses were examined and 14 documents were marked.

5.At the conclusion of the trial, the trial Court found that on the basis of the oral and documentary evidence, the prosecution has successfully



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established the guilt of the accused and accordingly, convicted and sentenced the accused to undergo 1 year rigorous imprisonment and to pay a fine of Rs. 5,000/-, in default, to undergo 2 months simple imprisonment for each of the offences under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. Challenging the conviction and sentence, the accused is before this Court by way of this appeal.

6.The case of the prosecution as narrated through the oral and documentary evidence is as follows:-

7.P.W2, by name Veerappan and his brothers were owning the property in S.No.219/5, measuring an extent of 73 cents. Out of the 73 cents, 10 cents were acquired by the Government for laying the National Highway. P.W2 gave a petition on 03.05.2007 seeking separate patta for the remaining extent of 63 cents. After a month, the accused came to the office of the Village Administrative Officer, namely Sekarbabu and at that time, P.W2 was enquired by the aforesaid Village Administrative Officer. P.W2 told him that he has given a petition seeking separate patta. The aforesaid Sekarbabu demanded that a sum of Rs.12,000/- must be paid as bribe amount, for which P.W2 stated that he was a poor person and could not pay the money. So, Sekarbabu advised P.W2 to



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contact the accused. The accused also, in turn, told him that Rs.6,000/- must be paid as bribe amount. After that, the property was measured by the accused and Sekarbabu. They told P.W2 that only 46 cents were available, but P.W2 and his brothers were entitled for 63 cents.

8.During the month of August, 2007, P.W2 again contacted the accused and requested him to measure the property correctly and at that time, the accused demanded a sum of Rs.6,000/-. On 13.09.2007, they remitted the required fee and at that time, the accused saw him and told him that he will make all the arrangements, but they must pay Rs.6,000/-. Again P.W2 expressed his inability to pay the amount. The accused told him that they may be pay Rs. 3,000/- initially and the remaining amount of Rs.3,000/- can be paid after some time. On 17.08.2007, P.W2 went to the respondent's office and lodged a complaint stating that the accused demanded a sum of Rs.6,000/- as bribe amount for the purpose of discharging his official duties.

9.Further event is spoken by P.W9, by name C.Kalavathey. She was working as Inspector during the relevant point of time in the respondent's office. She received the complaint from P.W2 on 17.08.2007 and registered the case in Crime No.8 of 2007 for the offences punishable under Section 7 of the



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Prevention of Corruption Act, 1988 at about 06.30 am., She made pre-trap arrangement and made a request to the Government Department for deputing two responsible Government officials for assisting the police team. As per her request, one Ilangovan and Sundararaja Moorthy attended the office of the respondent at about 08.15 am., They were introduced to P.W2 and the pre-trap arrangement was made as per procedure, which is normally undertaken and at that time, P.W2 handed over a sum of Rs.3,000/-, which contained denomination of Rs.500/- and Rs.100/-. She prepared a Mahazar for the aforesaid money. As usual, sodium bicarbonate solution was also undertaken. Phenolphthalein powder was smeared in the currency notes supplied by P.W2. She also made advise and gave instructions to P.W2 and other official witnesses for carrying out the trap process.

10. After completing the aforesaid pre-trap arrangements, they went to the office of the accused at about 11.15 am., As advised by P.W9, P.W2 and other witness, namely Sundararaja Moorthy went inside the office of the accused. After some time, all of them came out of the office and the accused took them to a nearby building, which is called as Suppiah Complex. From the Suppiah Complex, again they went to a Chavadi near Melur Bus-stand.



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11.Further event is spoken by P.W2. In the Chavadi, the accused demanded the money, which was handed over by P.W2 and accepted by the accused. As advised by P.W9, P.W2 came out of the Chavadi and made a signal. On seeing the signal, the police team went inside the Chavadi.

12.Further event is spoken by P.W9, the Trap Laying Officer. The accused was identified by P.W2. She made an enquiry with regard to the events that took place with P.W2 and other official witnesses. She invited the Deputy Tahsildar, namely Manoharan to witness the events. P.W2 was sent out of the scene. Sodium bicarbonate solution was prepared and the accused was advised to wash his right hand in the solution. He followed the instructions. It turned pink. The solution was collected in a container, labelled and sealed. Similarly, another solution was also prepared, in which the accused was advised to wash his left hand. The accused followed the advise and washed his left hand. It also turned pink. It was collected in another container, labelled and sealed. The accused also handed over Rs.3,000/- from his pocket. P.W9 compared the serial numbers with the serial numbers mentioned in the Mahazar, which was prepared at the time of pre-trap arrangement. It was found to be tallied.



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13. On enquiry, the accused was not in a position to give proper explanation. Only a sum of Rs.2,500/- was able to be recovered. Another sodium bicarbonate solution was prepared, in which the right side pant pocket of the accused was immersed. It turned pink. It was also collected in another container, labelled and sealed. Later, she seized the relevant records from the office of the accused. She prepared a Seizure Mahazar, in which the accused and the other witnesses signed. Search was also undertaken in the house of the accused, from where the petition and Challan, which were handed over by P.W2, were recovered. A search Mahazar was also prepared, in which also, the accused and other witnesses signed. The accused was arrested and remanded to custody.

14. Further investigation was undertaken by P.W10, by name Rajaram, who was working as Inspector during the relevant period. He undertook the investigation, recorded the statement of the witnesses and took further steps to send material objects for Forensic Science Laboratory examination. P.W11, by name Esakki Anandhan was the subsequent Investigation Officer. He took up the further investigation, received the sanction order from P.W1, recorded the statements and by perusing the records and materials, which have been collected during the course of investigation, prepared the draft final report and



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after completing the official formalities, presented the same before the concerned Court.

15.P.W3, by name Jeyaseelan, was working as Tahsildar in Melur during the relevant point of time. He stated that the petition filed by P.W2 for subdivision was received by him on 03.05.2007, which was later handed over to the accused for further process. P.W4, by name Sundararaja Moorthy is the shadow witness. He has corroborated P.W2 and P.W9 in material particulars.

16.P.W5, by name D.Indhurani was working as Junior Assistant in Melur Taluk Office. She has spoken about the petition presented by P.W2. P.W6, by name S.Manoharan was working as headquarters Deputy Tahsildar during the relevant period. At the request made by P.W9, he witnessed the events that took place during the trap process.

17.P.W7, by name A.Kannan, was working as Head Clerk in the office of the Chief Judicial Magistrate during the relevant point of time and he sent the material objects for examination. P.W8, by name Baskar was working as Scientific Assistant Grade-I. He examined the material objects, which were sent for chemical examination and submitted the report. With this, the prosecution



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side was over and the accused was put on Section 313 Cr.P.C questioning and he denied the incriminating evidences.

18.The accused has also submitted the written statement of defence. On his side, one Pazhanichamy was examined as D.W1. He stated that the Village Administrative Officer, Sekarbabu handed over a paper to the accused stating that it was given by P.W2, for which the accused stated that he will undertake the survey after the official order. He accompanied with the aforesaid Village Administrative Officer, Sekarbabu in a two wheeler. At the time he received some phone call. On enquiry, Sekarbabu stated him that someone has put the money in his office.

19.D.W2, namely M.Malaichamy was working as Firka Surveyor. He has spoken about the events, which were undertaking for sub-dividing the property and the documents, which were submitted along with the petition. He has spoken about the extent that was available in S.Nos.219/11, 219/12 and 219/13 and the steps that have been undertaken for rectifying the issue of extent.

20.The point for consideration is whether the judgment of conviction and sentence that has been passed by the trial Court is sustainable.



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21.It is not in dispute that the accused was working as Firka Surveyor during the relevant period in the Melur Taluk Office. The argument that was advanced by the learned counsel for the appellant is in short.

22.As per the evidence of P.W2, only Sekarbabu, who was working as Village Administrative Officer during the relevant time, demanded the bribe. But he was not neither a witnesses nor added as an accused. No complaint was lodged against him and no action was also taken against him. The date of demand ie., 17.08.2007 was not properly established. With regard to the sanction, it is the contention on the part of the appellant that the sanction order was issued after having consultation with the Investigation Officer. The date of recording the statement of the Sanctioning Authority is also different.

23.The motive for the false case is that as per the case of P.W2, the total extent, which was available, was 63 cents, whereas, on measurement, it was found that it was only 46 cents. So, this caused some sort of enmity in the mind of P.W2 to lodge a false complaint. With regard to recovery, only partial amount of the aforesaid bribe amount was recovered and there is no explanation on the part of the Investigation Officer with regard to the balance amount. With regard



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to the sodium bicarbonate solution test, right hand of the accused was not required to be washed. With regard to the measurement of the property, it was contended that it was undertaken before 17.08.2012 and so, there was no possibility or occasion for the accused to demand the bribe amount.

24.It is the further contention on the part of the appellant that as per the evidence of P.W2, he went to the office of the respondent police at about 06.30 am., The time mentioned by P.W2 is early hours, at which no office will be opened. So, according to the appellant, the time spoken by P.W2 is artificial and is not a natural one. It is further contended that the petition for transfer of patta was transferred many hands. So, there was no occasion for the appellant to demand the bribe amount.

25.In answer to the aforesaid submissions, it is the contention on the part of the learned Government Advocate (Crl.side) that P.W1 before issuing the sanction order, he had a detailed consideration and perused the records including Mahazars. P.W2 was corroborated in material particulars by the official witnesses. The petition presented by P.W2 for measuring the property was recovered only from the house of the appellant. The wife of the accused was also present. She was also examined. During the second survey only, the



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proper extent was found out. Against the Village Administrative Officer, Sekarbabu, disciplinary proceedings were also initiated. So, according to the learned Government Advocate (Crl.side), the demand, acceptance and recovery of money from the hands of the appellant have been properly established by the prosecution and the question of interference by this Court is not called for.

26.In the light of the aforesaid rival submissions, let us go to the factual aspects. It is not in dispute that P.W2 and his brothers were owning the property in S.No 219/5, measuring an extent of 73 cents before the acquisition of lands by the Government for laying the 4 way lane. It is also admitted that out of the aforesaid 73 cents, 10 cents were acquired and the remaining extent is 63 cents. This is now in dispute, because as per the evidence of P.W2, when unofficial survey was undertaken by the accused along with the Village Administrative Officer, Sekarbabu, only 46 cents were found available. So, again he made a request to measure the property officially and at that time, the accused said to have advised P.W2 to give a fresh petition by joining his brothers also. At that time, he demanded a sum of Rs.6,000/-, but before undertaking the unofficial survey, money was not demanded. So, according to P.W2, Rs.12,000/- was demanded by Sekarbabu for measuring the property, but without payment of the aforesaid amount as bribe, it appears that survey was undertaken.



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27. So, according to the accused, this is the motive between himself and P.W2. When the property available on site was less than the extent claimed by P.W2, P.W2 was under the impression that the property has been measured improperly. So, only to wreak vengeance, the complaint has been given. Subsequent to the complaint, the property was properly measured by another Surveyor called Murugesan. So, on this score, elaborate evidence of D.W2 has been taken. Actually, D.W2 was summoned by the defence for the purpose of proving the issue of enmity. But during the course of evidence, he was not supporting the case of the accused. So, at his request, he was treated as hostile and both side were permitted to cross-examine the witness. But why such sort of lengthy examination of the aforesaid witness has been undertaken is not understandable. Probably, the accused wanted to prove that because of the aforesaid non availability of the land claimed by P.W2, he has given the false complaint. So, in the light of the aforesaid issue, now let us go back to the evidence of P.W2.

28. With regard to the initial demand of Rs.12,000/- by Sekarbabu, there is no corroborative evidence. He remained silent for several months. The separate patta request was made on 03.05.2007. After a month, survey was



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undertaken. So, probably the unofficial survey would have been undertaken in June, 2007. During August, 2007, he approached the accused with a request to measure the property correctly. On 13.08.2007, a proper petition along with required fee was preferred, but it was handed over to the accused, since the accused promised P.W2 to make all arrangements and complete the process of survey. So, at that time, he demanded Rs.6,000/-. A portion of the aforesaid bribe amount was demanded and accepted by the accused at the time of trap. So, with regard to the demand of Rs.6,000/-, except the oral testimony of P.W2, no other corroborative evidence is available. So, on 07.08.2007, as mentioned above, the trap was made. At that time, in the Chavadi, the accused demanded money and accepted the same. The money was also recovered from the accused by the Trap Laying Officer, namely P.W9.

29.This demand of money by the accused has been corroborated by the evidence of P.W4, Sundararaja Moorthy. He would say in his evidence that he took part in the pre-trap arrangements. With regard to the demand on the particular date, he has stated that the accused demanded money, which was also handed over by him. So, the demand on that particular date of trap has been fully corroborated by the evidence of P.W4.



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30. But the important aspect, which escaped the notice of the Trap Laying Officer, namely P.W9 and the Investigation Officer, is that a sum of Rs.2,500/- has been recovered from the accused apart from Rs.3,000/-. But through P.W2, Rs.3,000/- has been marked as material object series. It was the evidence to the effect that this was the money that was handed over by him to the accused as bribe. Similarly, it is also the evidence to the effect that the accused handed over Rs.2,500/- from his right pant pocket.

31. Now let us go to the evidence of P.W9. He would say that MO1 series is the bribe amount and apart from the aforesaid amount of Rs.3,000/-, he has also handed over Rs.2,500/-, which is not connected with the bribe. So, that was also recovered, which is also marked in the material object series. So, that money ought to have been returned to the accused, but that amount was also shown as case property, which is totally unconnected and is clearly admitted by the Investigation Officer, namely P.W10. So, the mistake on the part of the Investigation Officer in not returning the aforesaid Rs.2,500/- to the accused, which was his personal money, need not be given any importance. From the aforesaid facts, it is seen that the prosecution has proved the demand and acceptance of the bribe amount by the accused.



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32. Here, recovery has not been disputed by the accused. What has been stated by him is that the money was placed in his table and P.W2 rushed out of the office probably to implicate him in corruption case. To that effect, D.W1, namely Pazhanisamy, has been examined. He stated that when he was accompanying the aforesaid Sekarbabu, a call came to his mobile phone and on enquiry, he stated that some one has placed money in the Chavadi. But this evidence is not corroborated by any other circumstantial evidence. As mentioned above, Sekarbabu was the prime accused, who made the initial demand of Rs.12,000/- for measuring the property. How he was missed out from the investigation process is not clear on record.

33. The argument on the side of the learned Government Advocate (Crl.side) that departmental proceeding was initiated against the aforesaid Sekarbabu is not sufficient enough to satisfy the conscience of the Court. He ought to have been included in the First Information Report as well as in the final report. But from this lapse of the Investigation Officer, the accused cannot take advantage. If really it was so, he would have examined the aforesaid Sekarbabu on his side, but he failed. Even if Sekarbabu has been examined as defence witness, his credibility would have been under cloud. So, the story that



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has been projected by the accused to the effect that the money was placed in the table of Sekarbabu with a view to implicate him in the corruption case is not at all convincing and acceptable one. So, this does not probabilise his defence also.

34.Now, coming to the evidence of P.W2 to show the motive, as I mentioned earlier, the explanation has been taken and has been stretched far away from the issue. What was really available in the site has been found out by the subsequent survey, then what went wrong on at the time of unofficial survey is not clear on record. It is not even the case of the prosecution that only to get money from P.W2 as bribe, such a wrong survey has been undertaken unofficially. Had it been the case of the prosecution, then only evidence of D.W2 would have assumed importance. It is also seen that for undertaking the survey, the accused has filed a writ petition before this Court in W.P.(MD) No. 22825 of 2015, in pursuance of which only, subsequent information has been furnished by the accused.



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35.Perusal of the defence side document shows that the accused wanted to establish the fact that the measurement and the survey that was undertaken subsequent to the complaint was not proper. Probably, this exercise had been undertaken by him only to probabalise his defence to the effect that during the unofficial survey, the extent available in the site was below the claim that was made by P.W2. That was the motive for giving the false complaint. No doubt that there was some discrepancies with regard to the extent that was available in the site.

36.From the information furnished by the concerned Tahsildar, it is seen that the defeat occurred in the plan that was prepared before UDR. After UDR and it is for the Revenue Authorities to correct the mistake. But however, it is admitted by P.W2 to the effect that subsequent to the complaint, survey was undertaken by another Surveyor, namely Murugesan and he accepted the extent that was available on ground. So, the lesser extent issue is not connected to the accused. It is for the complainant and his brothers to get the documents corrected and from this documents, it cannot be stated that the accused has probabalised his defence. Having done a mistake, he wanted to create the documents to escape from the criminal prosecution. So, this steps no way improve the case of the accused. So, it is established by the prosecution beyond



37. In the result, this Criminal Appeal fails and accordingly, it is dismissed. The appellant/accused is directed to surrender before the concerned authority to undergo the remaining period of sentence.

13.07.2022

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.ILANGOVA, J.

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**judgment made in
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13.07.2022