



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29/09/2022

COARAM:

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.A(MD)No.396 of 2016

Prakasam : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Sivagangai District.
(Crime No.1 of 2004) : Respondent/Respondent/
Complainant

Prayer:- This Criminal Appeal is filed under section 374 of Cr.P.C against the judgment passed by the Special Court for Prevention of Corruption Act cases, Sub Court, Sivagangai, in Special CC No.14 of 2014, dated 06/10/2022.

For Appellant : Mr.M.Subash Babu

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

**J U D G M E N T**

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This criminal appeal is filed against the judgment passed by the Special Court for Prevention of Corruption Act cases, Sub Court, Sivagangai, in Special CC No.14 of 2014, dated 06/10/2022.

2. The case of the prosecution in brief:-

The appellant was working as Village Administrative Officer of Melapungudi village, Sivagangai District. In that village, one Lakshmanan was having punja lands. He died, on 15/12/2003. For changing the service connection and patta in his name, the de-facto complainant Alagarsamy, who is the son of the deceased Lakshmanan approached the appellant for death certificate. At that time I.e., on 26/12/2003, the appellant demanded Rs.1,500/- as illegal gratification. Since, he was not willing to bribe the appellant, after some negotiation, it was reduced to Rs.1,200/-. Even then, the de-facto complainant was not willing to bribe him. So he approached PW14, the Inspector of Police attached to Vigilance Department and lodged a complaint. The complaint is marked as Ex.P2.



3. On the basis of the above said complaint, trap proceedings were undertaken and the pre-trap arrangement was made, on 03/01/2004 at about 6.00 am. PW14 made a request for trap proceedings to depute officer. In pursuance of the above said request, PW3- Ganesh and another person one Mohan attended the office. Both were introduced to PW2. Trap arrangement was made as per the procedure. Mahazar was prepared over the amount that was supplied by PW2 and the currency note numbers were mentioned; sodium carbonate solution test was also undertaken and the importance of the above said test was explained to PW2, PW3 and other witnesses. In the currency notes, that were supplied by PW2, phenolphthalein power was smeared. He gave instructions to PW2 to hand over the money to the appellant, if demanded by him and also gave a signal after the acceptance. In pursuance of the above said trap arrangement, at about 10.30 am, on the same day, all of them went to the office of the appellant. At about 11.30 am, near the Government School, the appellant was found. At that time, he asked PW2 whether he has brought Rs.1,200/-. In pursuance of the above said demand, the appellant accepted the money, counted the same and put it



in his shirt pocket. At that time, another person gave Rs.600/- for having measured his property. That was witnessed by PW3. After the acceptance of the above said money, PW2 made a signal and the police party approached the accused. He was identified by PW2. Sodium Carbonate Solution was prepared and the accused was instructed to wash his hand. It turned pink. It was collected in a container, labelled and sealed. In the mahazar, the witnesses signed. On enquiry, the appellant gave a reply that he received Rs.1,200/- from PW2. He handed over the same to PW14. Currency notes were compared with the mahazar prepared at that time of trap arrangement. Apart from that, Rs.600/- was also found in his pocket. On enquiry, he told that he received the above said amount of Rs.600/- from one Muthuraman for measuring the property. Apart from that, his personal money of Rs.65/- was handed over. That money was returned to the accused. In the occurrence place itself, the above said Muthuraman was enquired. He told that he paid the money for measuring his property.



4.Later, the shirt of the appellant was washed in sodium carbonate solution. It also turned pink. That was collected in another container, labelled and sealed. He was also arrested at 2.20 pm. He completed the preliminary enquiry.

5.The appellant was taken to the office, where documents have been collected, which appear the entry with regard to the death of the father of PW2. A search was made in the house of the appellant, where from documents showing the purchase of the properties have been seized.

6.PW15-the Inspector of Police, took up further investigation, recorded the statement of witnesses, collected relevant documents and after obtaining sanction order, as per the procedure, he laid the final report.

7.PW3, as mentioned earlier, is a shadow witness, who accompanied PW2 during the pre-trap arrangement and he corroborated PW2 and PW14 in material particulars with regard to the process of pre-trap arrangement and trap, etc.



8.PW4 was working as Junior Assistant during the relevant period in Sivagangai Taluk Office, on temporary basis. On 24/12/2003, PW2 approached him and after issuance of the death certificate of his father, that was received by him in a sealed cover and made entry in the relevant records. That application is marked as Ex.P12.

9.PW5 was working as Election Assistant in Sivagangai Taluk Office during 2003-2004. He spoken about the process of making entry in the relevant register with regard to the death and receiving the periodical report from the Village Administrative Officer. He has stated that no recommendation was received from the appellant and no written was also submitted by him. PW6 has spoken about the property and the availability of the well in the property of the deceased Lakshmanan.

10.PW7 is the son of PW2. He accompanied PW2 for getting the death certificate of Lashmanan, on 22/12/2003. At that time, he has stated that the accused demanded bribe and he has also spoken about the subsequent events.



11.PW8 was working as Tashildhar during the relevant time. At that time, he received the application from PW2 for issue of death certificate of his father and has spoken about further events and the procedure to be followed by the Village Administrative Officers.

12.PW9 has spoken about the registration of the certificate of the two wheeler bearing registration No.TN-63-B-5064. PW10 has spoken about the service connection that was available to the deceased Lakshmanan.

13.PW11 has spoken about the handing over of the material objects to the forensic science lab and etc., acts.

14.PW12 was working as Assistant during the relevant time in the Chief Judicial Magistrate Court, Sivagangai and he has spoken about the sending of the material objects to lab for testing. PW13 was attached to Forensic Lab, Chennai and spoken about the testing, which was undertaken by him on the material objects sent by the concerned court. With these, the prosecution witnesses were over.



15.The accused put on section 313 Cr.P.C proceedings. He denied the truth of the prosecution witnesses and no evidence was let in by him.

16.At the conclusion of the trial, the trial court has found that the charge that was framed against the appellant was proved beyond all reasonable doubt. Accordingly convicted and sentenced him to 3 years each RI and imposed a fine of Rs.1,000/-, in default to undergo 6 months RI for the offences under sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act.

17.Now challenging the conviction and sentence, this appeal has been preferred by the appellant on very many grounds.

18.The evidence of PW2 shows that he was in need of death certificate of his father for owning the properties in the village and during the relevant time, the appellant/accused was working as Village Administrative Officer of Melapungudi Village and he has stated that, on 22/12/2003, he approached the appellant along with his son for getting the death certificate of



amount to Rs.1,200/-. So the evidence of PW2 is fully corroborated by the evidence of PW7.

19. During the course of evidence, nothing credible to support the case of the appellant has been brought on record. There was no reason for PW2 and PW7 to make such an allegation against the appellant.

20. A suggestion was made to the appellant to the effect that there was a dispute between two villagers, over the periyar kalvai for about 10 years. In the above said issue, the appellant was supporting the other village, so PW2 villagers is enmity and apart from that, some demand was made by the farmers for recommending their name for reliefs. That was rejected by the appellant, over which also, there was inimical. Similarly, there was a dispute between PW2 and one Rajendran Chettiar over the money transaction and this appellant acted as a mediator in the above said issue and over the same also, there was inimical between PW2 and the appellant. So according to the appellant, more than one enmity existed between himself and PW2. At the instigation of the villagers, a false complaint has been



given. But absolutely, there is no corroborative evidence to show the enmity, except the statement during the course of examination. So the plea of enmity is not supported by even circumstantial evidence. So from the evidence of PW2 and PW7, it stands established that there was a demand of Rs.1,500/- and later, it was reduced to Rs.1,200/-.

21.Regarding acceptance, the evidence of PW2 again is very cogent and convincing. On the basis of the complaint given by him, as mentioned above, pre-trap arrangement was made, in which, PW3 participated. In pursuance of the said pre-trap, trap was made, on 07/01/2004. He accompanied PW2. As per the instructions given by PW14, he has stated in his evidence that they spotted the appellant at 11.30 pm near a school. At that time, he demanded, enquired, whether PW2 has brought the money demanded by him. In pursuance of the above said trap, PW2 handed over Rs.1,200/-. That was accepted by the appellant. He counted the same and put it in his pocket. He has also spoken about the presence of one Muthuraman in that place for whom the land measurement was undertaken by the appellant and this appellant



alleged to have accepted Rs.600/- from the above said Muthuraman. So the evidence of shadow witness has fully supported by the evidence of PW2.

22.A conjoint reading of the evidence of PW2 and PW3 shows that on 07/01/2004 also, there was a demand, accepted all the money by the appellant and the sodium solution test also turned positive. The amount that was received from the appellant from the place of occurrence tallied with the currency notes mentioned in the in the pre-trap mahazar. So even for this occurrence also, no point worth considering in favour of the defence, has been brought on record. So regarding the acceptance also, PW2 has also fully supported by PW3 evidence. Absolutely, I find no contradiction between the evidence of PW2 and PW3, which are material in nature. The fact that PW2 presented the application for getting the death certificate for his father is also fully supported by the official witnesses. It is also accepted and supported during the trial process. Considering the evidence on record, the learned counsel for the appellant/accused has restricted his prayer with regard to modification of sentence.



23.The learned counsel appearing for the appellant would submit that the crime is of the year 2004, now 18 years lapsed and during that period of time, the appellant was aged about 70 years. The trial was concluded in 2016. Now the appeal has been preferred in 2016 and it has been heard in 2022. Now, appellant is running about 78 years. According to the him, considering the age of the appellant, sympathetic view may be taken by this court to modify the sentence. So, this court is of the view that the age of the appellant/accused can be taken in the account as a mitigating circumstances to consider the modification.

24.In the result, this criminal appeal is partly allowed. Conviction under section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act is confirmed and the sentence imposed on the appellant/accused is modified to **one year Rigorous Imprisonment** for each offences. In respect of the fine amount, the order of the trial court is confirmed. The above said sentences are ordered to run concurrently. The period of custody, if any already undergone by the appellant /accused shall be given set off under Section 428 of Cr.P.C. The



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appellant/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

29/09/2022

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Special Court
for Prevention of Corruption Act Cases,
(Sub Court), Sivagangai.
- 2.The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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