



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.03.2022
Date of Judgment	06.04.2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVANCrl.A(MD)No.451 of 2016

WEB COPY

State of Tamil Nadu rep. by
The Public Prosecutor,
High Court,
Madras-600 104.

: Appellant/Complainant

Vs.

1.Tr.K.Muthusamy
2.K.Chinappa

: Respondents/Accused Nos.1 & 2

Prayer: Criminal Appeal is filed under 378 of the Criminal Procedure Code to set aside the judgment of acquittal of the respondents/accused passed by the Special Court for Trial of Prevention of Corruption Act, Trichy, in Spl. Case No.2 of 2013, dated 18.05/2016, convict and sentence the respondents/accused of the charges framed against him.

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

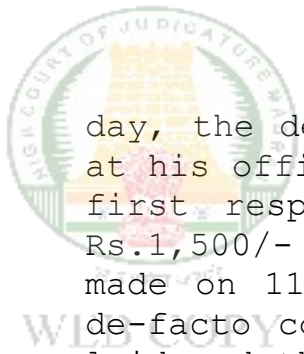
For Respondents : Mr.A.Robinson for R1
Mr.K.Sundaravel for R2

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 cases under Prevention of Corruption Act, Trichy, in Spl. Case No.2 of 2013, dated 18/05/2016.

2.The case of the prosecution in brief:-

The first respondent, who is the first accused was working as Assistant Executive Engineer in T.N.E.B office, Thuraiyur and the second respondent, who is the second accused was working as Junior Engineer in T.N.E.B office, Kannur, Thuraiyur Taluk, Tiruchirappalli. On 11.05.2011 at about 11 hours, the defacto complainant went to the first respondent office for shifting or transferring the service connection. At that time, the first accused demanded a sum of Rs.3,000/- from the defacto complainant as bribe for the purpose of transferring the service connection. On the same



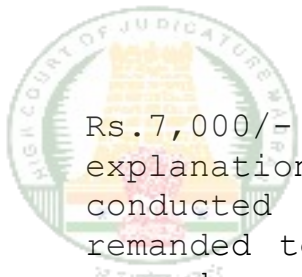
day, the defacto complainant met the second accused/Junior Engineer at his office at Kannanoor and explained about the happenings in the first respondent office, thereafter, he also demanded a sum of Rs.1,500/- as bribe for the same purpose. A specific demand was made on 11.05.2011 and in pursuance of the above said demand, the de-facto complainant lodged a complaint, which upon, trap was also laid and the first respondent was arrested red handed. He admitted the demand and acceptance of bribe amount of Rs.3,000/- from the de-facto complainant. As per the trap that was laid by the police and 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 2013 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:-

P.W.3 is the resident of Marukallampatti and he is doing agriculture in his own land in Kannur Village. At that time of purchase, the land was having service connection and in the year 2011, the same was changed in his name. For want of water, he made an application for changing the service connection to Marukallampatti Village. On 23.03.2011, he approached the second accused for the above said transfer and thereafter, there was no progress. Again on 10.05.2011 at about 03.00 p.m., he went to the second accused and enquired him. At that time, he told that approval has been made by the Executive Engineer and also asked him to go to the Assistant Engineer, who is the first accused herein for signature. Based on the said instructions, the model letter was prepared and that was taken to the first accused, namely, Muthusamy, at about 03.00 p.m on the same day and he approached the first accused with the above said petition and he made an enquiry in that petition and demanded that he must pay a sum of Rs.3,000/- (Rupees Three Thousand only) as bribe. He expressed his inability to pay the amount and therefore, he refused the petition and kept the same in his drawer. Later, he went to the second respondent office and told the development. At that time, the second respondent told that he must be given a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) and to give a sum of Rs.3,000/- (Rupees Three Thousand only) to the first accused. Again, he expressed his inability, but the second accused insisted the bribe amount. He was not willing to pay the bribe and went to the appellant office at about 08.00 p.m., and lodged a complaint and based on the complaint, the FIR was registered and he stayed in the office in the night. On 12.05.2011, at about 11.00 p.m., he was called by the appellant. At that time, two witnesses were found in the office. In pursuance of the above said complaint, the pretrap arrangements were made.



4. P.W.12 was working as Inspector of Police and he received the complaint that was given by the P.W.3 and made a consequential enquiry about the conduct of the accused. After getting the official approval, he registered the FIR and the same was marked as Ex.P.7 as mentioned by P.W.3. P.W.12 introduced the official witnesses to the complaint. The two official witnesses they were given instructions. In respect of the amount that was handed over, a mahazar was prepared in which, all the accused signed. P.W.12 instructed P.W.3 to give signal as soon as the demand and acceptance was made by the accused persons. Mahazar was marked as Ex.P9. He despatched the original FIR and the complaint as well as the other documents to the concerned Court. At about 11.15 p.m., P.W.12 along with his team members went inside the office of the accused. As per the instruction of P.W.12, P.W.3 went to the office of the first accused and made enquiry about his request. At that time, the first accused, namely, Muthusamy made enquiry with regard to the witness - Selvaraj and he demanded whether he has brought Rs.3,000/- (Rupees Three Thousand only) which was demanded by him. He gave a sum of Rs.3,000/- (Rupees Three Thousand only) to the first accused that was accepted by him and counted the same and kept in his pant pocket. The complainant asked about the petition. At that time, he told him to approach the second accused. As instructed by P.W.12, one Selvaraj came out of the office and gave signal. On seeing their signal, the police team went inside the office of the second accused. At that time, he was not available. Since the second respondent is not available in the office, he returned back and returned the amount of Rs.1500/- (Rupees One Thousand and Five Hundred only) to P.W.12. As stated by P.W.3, P.W.12 went inside the office of the first accused and P.W.3 identified him. On seeing the police team, the accused Muthusamy got shocked. The police team prepared the Sodium bi-Carbonate solution and collected the money from the first accused. P.W.12 enquired about the money which was demanded and received by him. The first accused handed over the currency notes and on counting, it was found that Rs.3,000/- (Rupees Three Thousand only) was available. He compared the currency notes with the Mahazar that was prepared during the pre-trap arrangements. The police team prepared the Sodium bi-Carbonate solution and the accused was asked to wash his hands in the Sodium Carbonate solution, Pink colour appeared. He collected the solution sealed and labelled and also recovered three documents from his office. On search made by the police team, the first accused handed over a sum of Rs.415/- (Rupees Four Hundred and Fifteen only) from his shirt pocket and another Rs.7,000/- (Rupees Seven Thousand only) from the shirt inner pocket and thereafter, when P.W.12 made enquiry about the money, the first accused told that Rs.415/- (Rupees Four Hundred and Fifteen only) is his personal money and with regard to the



Rs.7,000/- (Rupees Seven Thousand only), he has not given proper explanation. P.W.12 commenced the further investigation and conducted the official formalities. The accused was arrested and remanded to judicial custody and later, went to the office of the second accused. Since the second accused was not available in the office, he returned back a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to P.W.12.

5. The Inspector of Police was examined as P.W.13, who took up the further investigation and recorded the statement of the witnesses. After completing the investigation process, he filed a final report alleging that the accused committed the offence under Sections 7 & 13(2) r/w.13 (1) (d) of P.C.Act.

6. P.W.1 and P.W.2 are the sanctioning authorities for prosecuting the case against the second respondent.

7. P.W.4 corroborated the evidence of P.W.3 with regard to the pre-trap arrangements and the bribe demand and acceptance and other particulars.

8. P.W.5 Elangovan was working as an Agent in Tamil Nadu Electricity Board in Kothampatti. He has stated that he prepared the request letter and handed over the same to P.W.3. On 13.05.2011, again P.W.3 came to the office and enquired about the availability of the second accused. At that time, P.W.5 informed that he is not available and he went on other duty.

9. P.W.6 was working as an Agent, during the relevant time and he has spoken about the the inspection and he also stated that he was present at time of the arrest of the first accused by the police.

10. P.W.7 was working as a Revenue Supervisor at Kannur Electricity Board. He received the transfer application submitted by P.W.3 record the relevant entries with regard to the payment and other particulars.

11. P.W.8 was working as a Commercial Inspector and based upon the request made by P.W.3, procedure was undertaken by assessing the estimate and he also submitted that he recorded the entire particulars in the Register.

12. P.W.10 has spoken about the inspection undertaken based on the request made by P.W.3 for transfer of service connection.

13. P.W.11 also spoken about the arrest of the first accused.



14. After examination of the prosecution witnesses, evidence was over, the accused were subjected to 313 Cr.P.C examination and they denied all the allegations that have been made against them. During the course of defence side evidence, one witness by name Poornima was examined, she has stated that she was maintaining the attendance registrar in Kannur Executive Engineer Office and she also produced the attendance register for the month of May 2011, which shows that the accused attended the office on 2, 3, 4, 5, 6, 7, 9, 10, 11 and 13 and did not sign in the attendance register on 01.05.2011, 08.05.2011 and 12.05.2011.

15. The trial court, after examining, perusing the evidence and documents came to the conclusion that the prosecution failed to prove the case beyond all reasonable doubt and accordingly acquitted both the accused. As against the acquittal, the state has filed this appeal.

16. Heard both sides

17. The learned Additional Public Prosecutor, at the outset 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 the case of appeal against the acquittal, the learned counsel for the respondent/accused relied on the latest judgment of the Hon'ble Supreme Court in the case of ***N.Vijayakumar Vs. State of Tamil Nadu [(2021)3 SCC 687]*** 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 :

"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 :

(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.

(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."

18. If the judgment is suffered from perversity, the same can be substituted by the appellate Court. In this case, two views are possible. The appellate Court cannot take a different view, in which, the trial Court has the possible view only. Even then, the appellate Court cannot render it. So these are the basic principles which have to be borne in mind while discussing the matter in part.

19. Fortunately for the second accused, unfortunately for the State, the second accused was not at all present on the particular date of trap (i.e) on 12.05.2011. The first accused was available in the office on the date of trap and accepted the demand of bribe amount. So, this is the case of the prosecution. But P.W.3 who is the defacto complainant, during the course of chief examination, supported the case of the prosecution and during the course of cross examination, he supported the case of the first accused.



20. It is the specific case of the prosecution against the second accused that he only made a first demand on 10.05.2011, at about 3.p.m., for the purpose of completing the official process for changing the service connection. According to P.W.3, he made a demand of Rs.1,500/- for himself. According to him, the second accused also informed him that apart from the demand of Rs.1,500/- for himself and Rs.3,000/- must be paid to the first accused.

21. As I mentioned earlier, on 12.05.2011, the second accused was not available in the place of occurrence, even though pretrap arrangements were made by the appellant herein. There is no denial on the part of the prosecution that on the date of occurrence, the second accused was not available in the office and there was no demand and acceptance by him. However, the charge was framed against him under Sections 7 & 13(2) r/w.13 (1) (d) of the Prevention of Corruption Act. For the purpose of proving the case under Sections 7 & 13(2) r/w.13 (1) (d) of the P.C.Act, the prosecution must prove the demand and acceptance. Here, absolutely, except the statement of P.W.3/defacto complainant with regard to the initial demand, there was no subsequent demand and acceptance by the second accused.

22. As I mentioned earlier, during the course of chief examination, P.W.3 supported the case of the prosecution and during the course of cross-examination, he gave a new story that he borrowed a sum of Rs.10,000/- from one Manivannan with the help of the first accused and he promised to repay the above said amount within a period of three months. He repaid a sum of Rs.7,000/- and endorsement was also made on the document for the repayment amount and the balance amount will be paid by him within the time stipulated. The pressure was made by one Mannivannan to repay the balance amount, for which, the first accused asked P.W.3 to repay the same on 11.05.2011. On 11.05.2011, he approached the first accused and at that time, he made an enquiry whether he brought a sum of Rs.3,000/- was not actually bribe amount, but that suggestion was denied by him. It is the further evidence of P.W.3 that he lodged a compliant with the appellant in 10.05.2011 at about 08.00 p.m., and thereafter only, the FIR was registered on the next day, ie., only 12.05.2011.

23. The learned counsel for the respondent submitted that even as per the evidence of P.W.4 who was a shadow witness, he has stated that on 11.05.2011, at about 05.00 p.m., the police officials came to their office and requested the assistance for the trap, on the same day at about 5.00 p.m., higher official and asked him to go to the village administrative other's office, on the next day. P.W.12 the Inspector of Police as I mentioned earlier, received the



complaint on 11.05.2011 at about 08.00 p.m and on the same day itself, at about 10.00 p.m., he made a request to office and as well as Highways Department seeking access of the Government officials for conducting the trap proceedings, in pursuance of which, only on the next day, ie., on 12.05.2011, pretrap arrangements were made. So the evidence of P.W.4 and P.W.12 goes contra to each other. If clearly, the complaint was received on 11.05.2011 at about 10.00 p.m, absolutely there was no action or possibility for P.W.4 to act on particular date at about 05.00 p.m, the Department officials went to their office and asked the help of the higher officials to depute officials for the purpose of arrangements of the trap. So the very complaint itself is in doubt and as to why they were not in a position to inform the Court in time with regard to the complaint, is not known. Naturally, another doubt arises whether the complaint was registered on the day itself or prior to that and so the material contradiction is found by the trial Court. At this juncture, the case of the first accused is that believing the words of P.W.3, he received the amount from one Mannivannan, but absolutely beyond there is no corroboration of this aspect except the doubt with regard to the actual time of complaint and the date of complaint, no other doubt has been successfully raised by the first accused.

24. The next aspect is that after the seizure of money from the first accused, the statement was recorded from him, wherein he simply stated with regard to the money which was paid by the P.W.3. In this context, let us go to the evidence of P.W.1, who is the Sanctioning Authority to prosecute the case against the first accused. He would say that he perused the statement of the witnesses and the statement of the first accused, but it is not made available by the prosecution. During the course of trial, the statements were recorded from the witness which are not clear on the record, on the ground on which, the trial Court disbelieved the prosecution case.

25. According to the first respondent, in his statement, he has stated that the money received by him was really paid with one Manivannan and finding that this is not in support of the case of prosecution, that has been suppressed in the absence of any such record. In this aspect, no documents or production of the statement was produced before the trial Court or before this Court.

26. The learned Additional Public Prosecutor submitted that P.W.4 wrongly stated like that and no such statement was recorded, but that was not clarified either by P.W.12 or by the Investigation Officer during the course of trial.



27. The learned counsel for the respondents further submitted that absolutely there was no payment by the first accused from the defacto complainant. According to him, as per evidence of P.W.4, there was no payment from the first accused and only the defacto complainant told the first accused that he brought the money which was asked by him. So this mentioned to him will not satisfy the requirements of the payment of demand of bribe. In this aspect, let us go to the evidence of P.W.3 on this point. He stated that the first accused made an enquiry whether he has brought a sum of Rs.3,000/- to which, he made reply in positive that he has brought which was demanded by him. Already, at this point, the accused stated that the amount which was paid by the defacto complainant is only with reference to money that was payable to Mannivannan and not the bribe amount. As I mentioned earlier, to show the same, there is no corroborated evidence from the side of the first accused; so, we can take that it is only a belated attempt on the part of the first accused in explanation.

28. As I mentioned earlier, three major doubts are found in the prosecution case when there was an official demand and subsequently, the payment of acceptance and receipt of amount and recovery of same will not have any doubt and this position has been elaborately discussed and pointed out by the Honourable Supreme Court in the case of **N.Vijayakumar Vs. State of Tamil Nadu [(2021)3 SCC 687]**.

29. 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 the absence of any perversity or materials placed before the trial Court, on the ground, I am of the considered view that the prosecution has failed to prove its case.

30. In fine, this Criminal Appeal fails and the same is **dismissed**.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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,
Trichy.

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

Copy to

The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.M. KARTHIKEYA VENKITACHALAPATH, Advocate (SR-16886[F] dated 06/04/2022)

+1 CC to M/s.M. SARAIVANAN, Advocate (SR-17263[F] dated 07/04/2022)

Cr1.A(MD)No.451 of 2016
06.04.2022

sj (CO)

TR(06.06.2022) 10P 7C