BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2022

DELIVERED ON: 04.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.A.(MD) No.90 of 2016

A.Manibalan ... Appellant

vs.

State represented by
The Inspector of Police,
Vigilance and Anticorruption Wing,
Tiruchirappalli,
Tiruchirappalli District.
Crime No.9 of 2006 ... Respondent

PRAYER:- This Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment of conviction passed in Special Case No. 20 of 2011 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirappali dated 25.02.2016.

For Appellant : Mr.V.Kathirvelu Senior Counsel for
Mr.C.Christopher

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

JUDGMENT

Challenging the judgment of conviction passed in Special Case No.20 of 2011 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirappali dated 25.02.2016, this Criminal Appeal has been filed.

2.P.W2, Rajagopal lodged a complaint with the respondent stating that the accused, namely A.Manibalan/the appellant herein demanded and received a sum of Rs.1,500/- as illegal gratification for the purpose of discharging his official duty, when P.W2 made a request to pay arrears of amount. On the basis of the complaint given by the *de-facto* complainant, a case in Crime No.9 of 2006 was registered on 23.08.2006. Trap was laid on 23.08.2006 and the accused was arrested, when he demanded and accepted the money from P.W2. After completing the formalities of investigation, final report was filed, which was also taken cognizance by the trial Court in Spl.Case No.20 of 2011.

3.After the conclusion of the trial, the trial Court came to the conclusion that the guilt of the accused has been proved beyond all reasonable doubt and thereby convicted and sentenced him to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,500/- failing which to undergo 1 month simple imprisonment for the offence punishable under Section 7 of the Prevention of

Corruption Act, 1988 and to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,500/- failing which to undergo 1 month simple imprisonment for the offence punishable under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

4.The first charge against the accused/the appellant herein is that on 31.05.2006, he demanded a sum of Rs.1,500/- from P.W2 as illegal gratification for discharging his official duty and thereby, he has committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988. The second charge is that in pursuance of the aforesaid demand that was made, he accepted the illegal gratification on 23.08.2006 at about 12.20 pm., from P.W2 and thereby, he has committed the offence punishable under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

5.To prove the guilt of the accused, the prosecution has examined 15 witnesses, marked 22 documents and exhibited 5 material objects. On the side of the accused, 1 witness was examined and 5 documents were marked.

6.Now, the case of the prosecution as narrated though the evidences is briefly as follows:-

7.P.W2, by name Rajagopal, was working as Noon Meal Organizer and retired from the job on 31.05.2006. At that time, the accused/the appellant herein was working as Block Development Officer at Thathaiyankarpettai and an amount of 12,000/- payable to P.W2 was due under the Special Provident Fund scheme.

8.On 18.08.2006 at about 05.00 pm., P.W2 met the accused and made a request to sanction the arrear amount. At that time, the accused demanded a sum of Rs.1,500/- as contribution to the flag day celebration. P.W2 has stated that since he retired from the service, the accused cannot collect money from him, but the accused demanded the money. However, P.W2 did not intend to pay the same. So, on 22.08.2006 at about 09.00 am., he went to the office of the Vigilance and Anticorruption Wing, Trichy and lodged a complaint.

9.Further event was spoken by P.W13, who was working as Inspector of Police, Anti corruption Wing during the relevant period. He stated that P.W2 has given a complaint to him and based upon the same, he registered a case in Crime No.9 of 2006 for the offence under Section 7 of PC Act. Thereafter, he undertook the officials to process of trap laying.

10.He made a request to the Government department to depute two persons to assist the police department in the trap laying process. In pursuance of the aforesaid request, at about 10.45 am., the witnesses, namely Kamaraj and Sivanandham arrived at the office of the respondent police. He introduced the witnesses to P.W2. P.W2 handed over a sum of Rs.1,500/-, which was demanded by the accused as illegal gratification. He noted down the serial numbers of the currency notes in a Mahazar. All the witnesses as well as P.W2 signed in the Mahazar and thereafter, phenolphthalein was smeared in the currency notes and subsequently, sodium bicarbonate process was also undertaken, for which a Mahazar has been prepared, in which all the witnesses signed. He advised the witnesses as well as P.W2 to follow his instructions, while trap is laid and also advised P.W2 to hand over the money to the accused, if any demand was made by him.

11.With all the preparations are over, they started from the office to accused's office. At about 11.00 am., they reached the office. P.W2 and Kamaraj went inside the office of the accused. As advised and instructed during the preparations of trap, P.W2 made a signal. On seeing the signal, the police party went inside the office of the accused.

12.Further event is spoken by P.W2. When they entered into the office and contacted the accused, the accused enquired P.W2 whether he has brought the money for flag day contribution. He handed over Rs.1,500/-. The accused received the same and put it in his shirt pocket. So, at that time, on receiving the signal, the police team entered into the office.

13.Further event is spoken is by P.W13, by name Pandithurai. He would say that when they entered into the office, the accused was identified by P.W2. He prepared the sodium bicarbonate solution in two separate containers and the accused was directed to wash his right hand in the solution. He followed the instructions. It turned pink. It was collected in a container, sealed and labelled. Similarly, another sodium bicarbonate solution was also prepared and the accused was directed to wash his left hand. He washed his left hand and it also turned pink. That was collected in another container. P.W13 made an enquiry with the accused as to whether he has accepted any illegal gratification. The accused handed over Rs.1,500/-. P.W13 compared the serial numbers of the money with the Mahazar that was prepared during the trap laying preparation process.

14.A recovery Mahazar was also prepared, wherein the accused and other witnesses signed. He also recovered the shirt of the accused and the pocket was also dipped in another sodium bicarbonate solution. It also turned pink. That was also collected in another container, sealed and labelled. Search was made on the house of the accused, but nothing was recovered. The accused was arrested and later, he was released on bail.

15.Further investigation was undertaken by P.W14, by name Prasanna Venkatesh. He would say that on 24.08.2006, he recorded the statement of the witnesses and sent the material objects for chemical examinations. He made a request for sanction order. After completing the formalities of investigation, he laid the charge sheet on 30.07.2007.

16.P.W3, by name Kamaraj is the shadow witness. He corroborated P.W2 to some extent, but he has stated that the appellant/accused demanded a sum of Rs.1,500/- as illegal gratification from P.W2 and accepted the same. He also participated in the pre-trap arrangements, actual trap etc and also signed in all the relevant documents.

17.P.W4, by name Chandrasekaran was working as Assistant during the relevant point of time in Thathaiyankarpettai Union Office. He has spoken about the process of claiming the retirement benefit amount. He has spoken about the events that took place at the time of trap. P.W5, by name P.Karunanithi is another shadow witness. He supported the case of the prosecution to some extent like P.W3.

18.P.W6, by name Mohan was also working as Assistant and he has also spoken about the official process and the application submitted by P.W2 for claiming the retirement benefits. P.W7, by name Shanmugam was working as Cashier during the relevant point of time in Thathaiyankarpettai Union Office. He has spoken about the preparation of Bill etc.,

19.P.W8, by name Senthilkumar was a Driver of the aforesaid Union Office. P.W9, by name Perumal was also working as vehicle Driver. P.W10, by name S.Geetha was working as Assistant Engineer in Thathaiyankarpettai Union Office. She has spoken about the events.

20.P.W11, by name Rajangam was working as Development Officer during the relevant point of time. He has spoken about the events that took place during the trap. P.W15, by name Sivanandham was working as Assistant Engineer in the Assistant Executive Engineer Office, Agricultural Engineering Department. He was the shadow witness. He has also supported the case of the prosecution to some extent.

21.After completing the prosecution evidence, the accused was put on 313 Cr.P.C. questioning and he denied the allegations that have been made against him by the witnesses. On his side, one witness was examined as D.W1, who has spoken about the target that was fixed by the Government while collecting the flag day celebration contribution. He has also spoken about the appreciation that was received by the accused for achieving the target. So, with this examination of the witness was over, the accused was found guilty and sentenced him to undergo imprisonment as noted above. Challenging the conviction and sentence, this Criminal Appeal has been preferred by the appellant/accused.

22.Heard the learned counsel on either side.

23.As I mentioned above, the first charge is that the accused while discharging his official function as Block Development Officer in Thathaiyankarpettai Union Office, demanded a sum of Rs.1,500/- from P.W2 as illegal gratification for sanctioning the retirement benefit amount from the Special Provident Fund account. Reading of the first charge shows that the date of demand is not properly mentioned. It has been simply stated that P.W2 retired on 31.05.2006 and the accused was working as Block Development Officer from 28.07.2016 to 23.08.2006 in the aforesaid office. But, either during the course of trial or at the time of arguing the appeal, no specific ground has been made by the appellant to the effect that the charge is defective and because of the non-mentioning of the date of demand in the charge, his defence has been prejudicially affected. So, in the absence of such plea, let us go to the case of the prosecution.

24.P.W2 has stated that on 18.08.2006 at about 05.00 pm., he approached the appellant for disbursing the money. At that time, the accused demanded a sum of Rs.1,500/- as contribution to the flag day celebration. So, we can take that this is the date of the first demand. P.W.2 admitted the lodging of the complaint and he did not disburse the amount, but on the record, he would say that since there was a demand by the accused for flag day contribution and since there was a persisting demand to avoid from that payment only, he made such a complaint. Now, whatever it may be, he turned hostile for some unknown reason.

25.In the complaint, he has stated that on 18.08.2006 at about 05.00 pm., he approached the accused for the aforesaid purpose. So, we can take that this is the first date of demand. The complaint was lodged on 22.08.2006. Since P.W2 has gone against his own statement, then the initial demand that was allegedly made by the accused on 18.08.2006 falls to the ground.

26.The argument on the side of the prosecution that there is a clear averment by the witness in the complaint must be taken into account. But the allegations in the complaint are not the substantial evidence. Substantial evidence is the evidence that is spoken by the witnesses during the course of trial, if at all complaint can be taken only a supporting or corroborating document. Here, P.W2 has gone against his own allegation in the complaint, then as I mentioned earlier, the initial demand that is allegedly made by the appellant has not supported by any corroborative evidence and the same falls to the ground.

27.Now, coming to the next demand ie., on the date of trap, which was made on 23.08.2006 at about 12.20 pm., Again, as I mentioned earlier, P.W2 has not supported the case of the prosecution. But he supported the case of the defence. He would submit that at about 12.20 pm., they went inside the office of the appellant and at that time, the appellant made an enquiry what happened to the money demanded by him. In pursuance of the aforesaid demand, P.W2 handed over Rs.1,500/- and this evidence, which has been heavily relied by the prosecution to prove that there was an initial demand, subsequent demand and acceptance of money. Now, the question, which arises for consideration is whether this piece of evidence is sufficient enough to hold that there was initial demand and the demand on a specific date and acceptance of money.

28.In this connection, the evidence of P.W2 is relevant. As I mentioned earlier, he supported the case of the defence that what was demanded by the accused was only contribution to the flag day celebration and not a bribe amount or illegal gratification, as the case may be. So, the evidence of P.W3 is to the effect that an enquiry made by the accused as to what happened to the money demanded by him will amount to demand of illegal gratification.

29.In my considered view, at no stretch of imagination, such an enquiry will amount to demand of any illegal gratification. Only general word has been spoken by P.W3 with regard to the enquiry and he was not very categorically stated to the effect that what was enquired by the accused is directly connected to the illegal demand. So, P.W3's evidence is not sufficient enough to hold that on the date of trap itself, the accused demanded illegal gratification for discharging his official duty.

30.In the backdrop of the aforesaid factual aspects, let us go to the other circumstances. P.W4 has stated during the course of evidence that the request that was made by P.W2 was attended and the accused has also signed in the sanction order on 08.08.2006. That file was also marked as Ex.B1 on the side of the accused. Pointing out to this evidence and document, it is the contention on the pat of the appellant that absolutely there was no possibility for having demanded the money and accepted the same as illegal gratification, since he has already passed the order sanctioning the amount.

31.On hearing this argument, it is the contention on the part of the prosecution that suppressing this fact only, the accused has demanded the money and accepted the same. Since final approval has to be made only by the accused, the reason for making this submission is that as per the procedure as spoken by the witnesses, after the preparation of the Bill, presentation and encashment will be made and the amount will be disbursed only by the accused personally, which means that the accused is the sanction as well as the Disbursing Officer of retirement benefits. So, the prosecution would submit that taking advantage of his position only, suppressing the sanction order, he has demanded the money and accepted the same. But absolutely this argument is not supported by any material that has been collected during the course of investigation. The Investigation Officer has not taken any care to say that suppressing this important aspect only, demand was made by the appellant. Had it been so, the charge would also have been framed, accordingly. But this is the lapse that has been committed during the course of investigation by the Investigation Officer.

32.Another aspect that has been spoken by P.W6 is also heavily relied by the appellant. He stated that only cheque will be disbursed to the employees and not cash amount. So, on this aspect, there is some contradiction. But whatever it may be, he has stated that P.W2 presented the Bill in the treasury on 21.08.2006. So, according to the appellant, when P.W2 himself has presented the Bill and obtained token for disbursement of the amount through cheque, then absolutely there was no possibility for the appellant to demand money as illegal gratification. So, according to him, what was demanded and received by him was only the contribution to the flag day celebration and not an illegal gratification. This important aspect has been escaped not only the notice of the Investigation Officer but also the trial Court. How this important aspect escaped the notice is also not clear on record and there was no proper explanation on the side of the prosecution also.

33.In the light of the aforesaid factual aspect and when the initial demand was not properly established and even the demand that was made on the date of trap is also not properly established, the question, which arises for consideration is whether recovery of tainted money from the custody of the appellant is sufficient enough to hold that it is an illegal gratification. As I mentioned earlier, only P.W2 is the competent person to speak about the nature of demand and the purpose of demand.

34.Here, he turned hostile and he has also not supported his own version in the complaint. So, it is seen that he is not a reliable person. So, it is not safe to convict the appellant on the uncorroborated testimony of P.W3, more specifically in the light of the aforesaid factual aspects with regard to the preparation, presentation of Bills even before the date of trap.

35.Now, the prosecution would heavily rely upon the circumstantial evidence. According to the prosecution, most of the official witnesses attached to the office have spoken about the events that took place during the trap. But the circumstantial evidences in the light of the aforesaid factual aspects are not sufficient enough to hold that what was demanded by the appellant was only an illegal gratification.

36.It has been consistently held by the Hon'ble Supreme Court right from the judgment in the case of ***Satyanarayana Murthy Vs. State of A.P.*** reported in ***(2015) 10 SCC 152***. But as I mentioned earlier, the prosecution heavily relied upon the circumstantial evidence. Pointing out that there was divergent view on this aspect, the Hon'ble Supreme Court in the case of ***Neeraj Dutta Vs State (Govt. of NCT of Delhi)*** reported in ***AIR Online 2019 SC 515*** has referred the matter to the larger Bench as to answer the question whether in the absence of evidence of the complainant-direct or primary evidence of demand of illegal gratification whether it is permissible to draw the inferential deduction of guilt of a public servant under Section 7 and Section 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act, 1988.

37.This has been pointed out by this Court in the case of ***P.Mani Vs. State of Tamil Nadu*** reported in ***2021 STPL 660 Madras***. Now, here P.W2 has stated that what was demanded by the appellant is only for the flag day celebration and contribution. So, in the light of the aforesaid discussion, I am of the considered view that it is not safe to convict the appellant on the basis of the uncorroborated testimony of P.W3 that what was demanded by the appellant was only illegal gratification for discharging his official duty. So, on that ground, the judgment of conviction and sentence passed by the trial Court is required to be interfered.

38.Accordingly, the judgment of conviction passed in Special Case No.20 of 2011 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirappali dated 25.02.2016 is hereby set aside. This Criminal Appeal is allowed and the accused is acquitted from the charges that have been framed against him. The fine amount paid already, if any, shall be refunded to the appellant and the bail bond shall stand discharged.

Index : Yes / No
Internet : Yes / No
mm

04.07.2022

To

1.The Judge,
Special Court for Trial of Cases
under Prevention of Corruption Act, Tiruchirappalli.

2.The Inspector of Police,
Vigilance and Anticorruption Wing,
Tiruchirappalli,
Tiruchirappalli District.

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

G.ILANGOVAN, J.

mm

judgment made in
Crl.A.(MD) No.90 of 2016

04.07.2022