BAIL SLIP

The Appellant/Sole Accused G.Arumugam, S/o.Ganapathi, has released on bail as per the order of this court dated 18.01.2017 and 22.03.2017 made in CRL MP(MD).475 of 2017 in CRL A(MD).15 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 28.04.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.15 of 2017

G.Arumugam : Appellant/Sole Accused

Vs.

The State of Tamil Nadu,
Represented by its
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai,
Sivagangai District.
(Crime No.2 of 2003_ : Respondent/Complainant

Prayer: Criminal Appeal filed under 374(2) of the Criminal Procedure Code to call for the records of the judgment dated 28.12.2016 in Special C.C.No.6 of 2014 on the file of the Special Court for Cases under the Prevention of Corruption Act, Sivagangai District, in Crime NO.2 of 2003 on the file of the respondent police and set aside the same and acquit the Appellant/Sole Accused.

For Appellant : Mr.T.Lajapathi Roy

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

JUDGMENT

This Criminal Appeal is preferred against the judgment of conviction and sentence passed by the Special Court for Cases under the Prevention of Corruption Act, Sivagangai District, in Special C.C.No.6 of 2014, dated 28.12.2016, by which, the appellant was convicted and sentenced to undergo 2 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Simple Imprisonment for the offence punishable under Section 7 of Prevention of Corruption Act, 1988; to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo

6 months Simple Imprisonment for the offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, and directed the above sentences to run concurrently.

2.**The case of the prosecution**:-

P.W.2 lodged a complaint with the first respondent stating that the appellant, who was working as Assistant Account Officer, Tamilnadu Electricity Board, Sivagangai District, demanded a sum of Rs.150/- for the purpose of discharging his official duty of transferring the defacto complainant's name in the service connection to the house in D.No.6-166/5 in Kallal Village. In pursuance of the complaint lodged by him, a case was registered in Crime No.2 of 2003 by the first respondent and a trap was laid. When the appellant has accepted the bribe amount of Rs.150/-, he was arrested. Based upon that, investigation was undertaken and a final report was also filed before the Special Court for Cases under the Prevention of Corruption Act, Sivagangai District,, which took cognizance in Special Case. No.6 of 2014 and framed the following charges against the accused.

(ii) The first charge is that the appellant demanded a sum of Rs.150/- as bribe amount for the purpose of discharging his official duty for transferring the defacto complainant's name in the service connection and accepted the same on 08.04.2002, at about 05.00 p.m in his office, thereby, he has committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

(iii) The second charge is that by demanding and accepting Rs.150/- as bribe amount, he has committed criminal misconduct and thereby, he is liable to punish for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

(iv) After framing the above said charges, the appellant was questioned and he denied the charges. For proving the above said charges, the prosecution examined 14 witnesses and marked 36 documents. On the side of the accused namely, the appellant herein, no witness was examined and no document marked. 7 Material Objects were exhibited by the prosecution.

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

P.W.2, who is the defacto complainant is a resident of Indra Nagar, Kallal. She approached the appellant for the purpose of transferring the service connection in the house, which was purchased by her from one Sethu and submitted the relevant documents and forms. At that time, the appellant demanded a sum of Rs.150/- as bribe. He also advised her to remit Rs.200/- towards legal charges. She did not intend to give bribe. So, she requested the help of P.W.3, who is her neighbour and approached the Deputy Superintendent of Police, Vigilance and Anti Corruption Wing, Sivagangai, and as per his instruction, P.W.12, who was working as Inspector, attached to the Vigilance and Anti Corruption Wing, Sivagangai, registered a case in Crime No.6 of 2002 under Section 7 of the Prevention of

Anticorruption Act. He submitted the original copy to the concerned Court and requested the officials for assisting him to lay the trap. As per his request, one Mythili and Santhanakrishnan came to the office. On the arrival of the above said witnesses, he introduced them to P.W.2, the defacto complainant. At his request P.W.2 handed over Rs.150/- as 3 fifty rupee notes. Apart from that, she also handed over Rs.200/- as 2 hundred rupee notes, which was liable to be paid for effecting the service connection. The mahazar was prepared in respect of all the currency notes. Phenolphthalein powder was smeared in the fifty rupee notes. As per the procedure, they undertook the phenolphthalein and Sodium Bicarbonate treatment. He advised P.W.2 and other witnesses to undertake the steps as per his advise. After completing the pre-trap process, the Police Team went to the appellant's office at about 04.45 p.m. The Police Team was waiting in a hidden place and advised P.W.2 and the witness one Subramanian and official witness Mythili to go to the office of the appellant and if money is demanded, the same must be given as bribe.

4.**Further events was spoken by P.W.2**:-

As advised by the respondent, P.W.2 and Mythili went inside of the office of the appellant. P.W.2 handed over the money to the appellant and the witness Mythili having conversation with the appellant. The appellant put the money in his pocket. Both of them came out of the office and as advised, she made a signal. On seeing the signal, P.W.12 Team went inside the office of the appellant. P.W.2 identified the appellant to P.W.12. Enquiry was made and they preferred Sodium Bicarbonate Solution and the appellant was asked to wash both his hands separately. He has also washed his hands separately and in both times, the solution turned pink. That solutions were collected separately and separately labelled and sealed. The appellant has also handed over Rs.150/-. He compared the number with that of the number mentioned in the mahazar, which was prepared at the time of pre-trap arrangements in the office. The pant pocket of the appellant was also dipped in Sodium Bicarbonate Solution and it also turned pink. The solution was also collected in the separate container and labelled and sealed. On enquiry, the appellant said to have stated that he received the money for taking food. Then he recovered the relevant records from the office. He prepared the mahazar for the records recovered from the office. The appellant was arrested at about 07.00 p.m and remanded to custody. A search was also made upon the house of the appellant. But, nothing was recovered. He filed an alteration report by altering the First Information Report to offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

5.Further investigation was undertaken by P.W.13. He recorded the statement of the witnesses and sent the material objects to the Forensic Science Laboratory for examination.

6.Further investigation was undertaken by P.W.14, who was working as DSP. He recorded the further statement of the witnesses after obtaining the sanction order from P.W.1. He laid a final report stating that the appellant has committed the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Anticorruption Act.

7.P.W.3 stated by P.W.2 is a neighbour and he has spoken the original demand that has been made by the appellant, the participation in the pre-trap arrangements and the trap proceedings with regard to the demand that has been made by the appellant and acceptance, etc., facts.

8.P.W.4 was the official witness as mentioned above. She also corroborated P.W.2 & P.W.3 with regard to the demand and acceptance of amount as bribe by the appellant, on the date and time as mentioned by the prosecution. She also participated in the trap arrangements and signed in the relevant records.

9.P.W.5, Sethu, was working as an employee in a Lorry Shed. He sold the property to P.W.2.

10.P.W.6, Maran, helped P.W.2 in filling the forms and also typed the security bond.

11.P.W.7, who was working as an Accounts Supervisor in Tamilnadu Electricity Board, Karaikudi. He has spoken about the name transfer file pertaining to P.W.2.

12.P.W.8, who was working as Executive Engineer in Tamilnadu Electricity Board, Karaikudi, during the relevant point of time. He has spoken about the procedure to be followed for transferring the name in the service connection.

13.P.W.9, who was working as a Sherstader in the Trial Court, has spoken about the Material objects for chemical examinations.

14.P.W.10, Santhanakrishnan is an another official witness, who participated in the trap arrangements and he also watched the events, which took place at the time of trap. He also signed in the relevant records.

15.P.W.11 has spoken about the examination of Material Objects, which were submitted to the Lab for report.

16.With these evidence, prosecution was over. The appellant was subjected to questioning under Section 313 Cr.P.C examination and he denied the evidence that was laid by the prosecution. After hearing the parties, the appellant was convicted and sentenced as noted above.

17.**Points for consideration:-**

It is not in dispute that the accused, who is the appellant herein was working as an Account Officer during the relevant point of time in the Tamilnadu Electricity Board, Karaikudi. It is also not in dispute that P.W.2 made an application for transferring the name in the service connection to the house, which was purchased by her with the above said witness Sethu and also that P.W.3 is the neighbour of P.W.2. There was no motive between these two witnesses and the appellant herein, before the complaint. So, with this factual position, let us go to the main issue.

18.As stated above, it is a specific case of the prosecution that the appellant demanded and accepted Rs.150/- as bribe towards discharging his official duty and also not in dispute that this appellant was the competent person to deal with the file pertaining to the transfer form.

19.It is the case of the appellant that what was paid by P.W.2 to him is a legal money payable towards legal charges for effecting the transfer of name and this is the specific stand that has been taken during the course of appeal proceedings. Such a stand was not taken during the course of trial process. What was the defence during the trial was that there was enmity between the appellant and some union people in the office. By utilising the illiterate P.W.2, his enemies have foisted a false case. But, absolutely, there is no evidence on record to show that there was a previous enmity between the above said employees union and this appellant; P.W.2 has been used as a tool to foist a false case against the appellant. Absolutely, there is no material on record.

20.When a specific stand has been taken by the appellant during the course of argument, the learned Additional Public Prosecutor would submit that absolutely even during the course of 313 Cr.P.C examination, the appellant has not taken such a stand.

21.The learned counsel for the appellant took a specific stand that even as per the evidence of P.W.2, the money was offered in a folded form. According to him, believing that it is only a legal money, he received the same and there is no question of acceptance of bribe amount and there was no demand also.

22.When such a specific stand has been taken by the appellant during the course of appeal, the question which arises for consideration is that **whether in the absence of any such plea before the Trial Court, such a defence can be taken.** No doubt, that the accused person can take advantage of weakness of the prosecution case. Probably, the defence has been taken only on these circumstances. Now, whatever it may be, the defence that was taken before the Trial Court and before the Appellate Court, in the light of the above said arguments. Let us go to the evidence on record.

23.P.W.2 is a Village ill-literate and rustic lady. She was not in a position to give a statement before the Court in a proper and casual manner. She has forgotten many things and many things also faded from her memory. In a casual manner, she has given statement before the Court. Reason for me to make such a comment is that there are material contradictions between the evidence of P.Ws.2, 3 & 4 with regard to the demand and acceptance of bribe amount by the appellant.

24.The contradiction that were available on record has been pointed out to the learned Additional Public Prosecutor. In respect of that issue, he has submitted that P.W.2 being an illiterate rustic lady and more particularly, she has been examined after a lapse of several years before the Trial Court, absolutely, her mind and memory might have gone wrong. So, it is true that she was examined after a lapse of several years. But, one thing must be taken into account, the material contradictions. Let us ignore the evidence of P.W.2 for a while.

25.P.W.3 is the key witness to the entire episode. According to him, he has all along present with P.W.2 right from the date of preparation of documents for taking the procedure of transferring the name and his association with the occurrence lasted till he was examined before the Trial Court. So, the long association of P.W.3 with the case, gives some sort of clarity to the issue. But, here, again, we see some sort of material contradictions.

26.He has stated in his evidence that he accompanied with P.W.2 to the appellant's office and handed over all the documents on 27.03.2002. At that time, the appellant stated that Rs.200/- must be paid towards legal charges and Rs.150/- must be paid as a bribe amount. P.W.12 told that she has brought only Rs.200/-. Subsequently, the appellant returned back all the documents. Again on 02.04.2002, at about 10.00 a.m, they visited the appellant's office and at that time, he requested whether they have brought the legal money as well as the bribe money. Again, they handed over the documents. Hence, they returned from the office. At that time, P.W.2 told him that she is not willing to give bribe amount to the appellant. So, he advised P.W.2 to lodge a complaint with the Vigilance Department, Sivagangai. At her dictation and instruction, he wrote the complaint in his handwriting. He also signed in the complaint as a witness, that was marked as Ex.P.2. On 08.04.2002, at about 10.30 a.m, he took P.W.2 to the Vigilance and Anticorruption Wing, Sivagangai, and handed over the compliant to the Deputy Superintendent of Police. So, according to P.W.3, on two occasions, he and P.W.2 went to the appellant's office. On these two occasions also, the accused demanded bribe amount. But,P.W.2 has not stated anything about the presence of P.W.3 when demanding of bribe was made by the appellant to her. Similarly he has not stated anything about the second visit to the appellant office. So, this aspect is important with regard to the demand of bribe amount by the appellant.

27.There is contention on the side of the prosecution side that because of the lapse of time, the memory would have been lost by P.W.2 with regard to the presence of P.W.3 during these two occasions. But, unable to agree this line of argument for the simple reason that she clearly spoken about the presence of P.W.3 at the time lodging the complaint. So, the contention of the prosecution that these two occasions, the appellant demanded bribe amount is not supported by acceptable evidence. In the light of the contradiction between P.W.2 & 3, the issue of demand on two occasions can be taken, which is not established beyond reasonable doubts.

28.Now, coming to the trap occurrence, it is the evidence of P.W.2 and 3 that the phenolphthalein powder was smeared in the three fifty rupee notes. But, however, mahazar was prepared in respect of Rs.150/- as well as Rs.200/-. They went to the office of the appellant. At that time, the appellant enquired whether she has brought Rs.150/-, the bribe amount. P.W.2 handed over three fifty rupee notes. The appellant received the same and put it in his pant pocket. Then he demanded the legal amount of Rs.200/-. That was also received by the appellant. In this context, P.W.2 has stated that she went inside the office of the appellant along with witness Mythili. When she gave the money to the appellant, the Witness Mythili was talking with him. The appellant received the amount and put the same in his shirt pocket. After examination, she stated that she also paid Rs.300/- along with the above said Rs.150/-. During the course of cross-examination, it is stated that she put the total amount of Rs.450/- on the table. The appellant put Rs.150/- in his pant pocket and what happened to the remaining Rs.300/- is not known to her. On that context, P.W.3 has stated that as mentioned earlier, totally, Rs.350/- was received by the appellant.

29.In this context let us go to the evidence of official witness namely, Mythili. She was examined as P.W.4. She has stated that when they entered into the office, the appellant enquired whether they have brought Rs.150/-. P.W.2 handed over the money and that was put by the appellant in his pant pocket. But, she has not spoken about the above said demand of Rs.200/-, legal charge. She has further stated that Rs.200/- was returned to P.W.2 by the Inspector, Pandiyarajan. So, with regard to the total amount that was received by the appellant, there is material contradiction.

30.In this context, we will go to the evidence of P.W.12. He has stated that phenolphthalein powder was smeared only in the fifty rupee notes and that was given to P.W.2 to hand over the same to the appellant, if it is demanded by him. Rs.150/- was recovered from the appellant. He has further submitted that during the course of cross-examination he did not recover the above said Rs.200/- from the appellant. That amount was neither demanded nor accepted by the appellant. P.W.2 also did not pay the money to the appellant. No mahazar was also prepared with regard to the above said Rs.200/-. Only to clarify this point, the matter was heard after reserving the case for judgment. I have pointed out the above said material contradiction to the learned Additional Public Prosecutor.

31.The learned Additional Public Prosecutor would submit that no doubt that there is some sort of discrepancy with regard to the above said Rs.200/-. According to him, it is a minor contradiction, which does not affect the case of the prosecution since the bribe amount has been clearly stated by the witnesses and that was recovered from the appellant. So, according to him, no importance need be given with regard to Rs.200/-. But, I am unable to accept this line of argument.

32.It is the case of prosecution that apart from the legal amount, bribe amount was also demanded by the appellant. It is the duty of the prosecution to clearly establish as to what had happened to the legal amount. If it is the case of the prosecution, that both the amount have been paid in a different dates, then we can say that need not assume any importance. Here, both the amounts have been tendered at the same time to the appellant. The Trap Laying Officer has not concentrated on this point. He has concentrated only on the alleged bribe amount of Rs.150/- and not the legal amount. So, proper explanation ought to have been offered by the prosecution as to whether this Rs.200/- was also tendered to the appellant or not. With regard to the recovery also he says that there are contradictions. If really Rs.200/- was also demanded and accepted by the appellant as spoken by P.W.2 and 3, then recovery mahazar ought to have shown the same. But, recovery mahazar has not spoken about the recovery of the legal amount from the appellant. In the mahazar, it has been stated that Rs.200/- was recovered from P.W.2. So, this important aspect, no doubt affect the prosecution case of demand of bribe amount.

33.But as stated earlier, the amount of Rs.150/- has been recovered from the appellant and there was no satisfactory explanation by him. Except stating that believing that it is charge, he received the same, but, such explanation was not offered either during the course of trial or during the course of filing the appeal memorandum. In the appeal memorandum, it is simply stated that the file was already returned to P.W.2 for rectifying some defects.

34.Whatever it may be, now, belated explanation was offered by the appellant, cannot be accepted. So, naturally, the prosecution even though failed to prove the factum of demand of bribe amount, atleast successfully established the receipt of the illegal gratification. So, the offence punishable under Section 7 of the Prevention of Anticorruption Act, has been successfully established. But, insofar as the offence punishable under Section 13 (2) r/w 13(1)(d) of the Prevention of Anticorruption Act, has not been established beyond all reasonable doubts.

35.To that extent, the judgment of conviction and sentence passed by the Trial Court requires interference. Accordingly, the **conviction under Section 13(2) r/w 13(1)(d) of Prevention of Anticorruption Act, is set aside** and consequently, the sentence on the above said provisions also setaside and **insofar as the offence under Section 7 of the Prevention of Anticorruption Act, is concerned, the conviction is confirmed.** But, however, considering the amount involved in the occurrence, the imprisonment of two years, imposed upon the appellant can be reduced to **6 months of Rigorous Imprisonment, from 2 years under Section 7 of the Act.**

36.In the result, the judgment of conviction and sentence passed by the Special Court for Cases under the Prevention of Corruption Act, Sivagangai District, in Spl.C.C.No.2 of 2003, is modified to the above said extend and the appeal is **partly allowed.** The conviction imposed on the appellant under Section 7 of the Act, is sustained. Insofar as the sentence is concerned, it is modified to 6 months of Rigorous Imprisonment at stated above. Fine is sustained.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dss

To

1.The Judge, Special Court for Cases under the Prevention of Corruption Act,
Sivagangai District

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Sivagangai,
Sivagangai District.

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

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-22500[F] dated 29/04/2022)

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28.04.2022

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