BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/12/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.315 of 2017

K.Solai : Appellant/Sole Accused

Vs.

The State of Tamil Nadu
represented by its
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Sivagangai,
Sivagangai District.
(Crime No.06 of 2009) : Respondent/Complainant

Prayer: Criminal Appeal is filed under section 374 of the Criminal Procedure Code, to call for the records of the judgment, dated 31/07/2017 in Special CC No.54 of 2014 on the file of the Special Court for cases under Prevention of Corruption Act, Sivagangai District, in Crime No.6 of 2009 on the file of the respondent police and set aside the same.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is preferred against the judgment, dated 31/07/2017 in Special CC No.54 of 2014 on the file of the Special Court for cases under the Prevention of Corruption Act, Sivagangai District, in Crime No.6 of 2009 on the file of the respondent police and set aside the same.

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

The accused being a public servant has demanded Rs.8,000/- as a motive or reward from the de-facto complainant for patta transfer in his name and has committed the offence punishable under section 7 of the Prevention of Corruption Act. In pursuance of the earlier demand, the accused by abusing his official position, demanded and accepted Rs.3,500/-, on 24/07/2009 from the de-facto complainant for patta transfer in his name, thereby committed the offence of criminal misconduct punishable under section 13(2) r/w 13(1)(d) of the

Prevention of Corruption Act. On the basis of the complaint given by the de-facto complainant, a case was registered and trap was laid. The accused was arrested and after completing the formalities of the investigation, filed a final report. After completing 207 Cr.P.C proceedings, framed the charges for the offences under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.During the trial process, on the side of the prosecution, 11 witnesses have been examined and 25 documents marked, apart from 5 materials objects marked. On the side of the accused, one witness was examined and no document was marked.

4.***<u>The case of the prosecution, as narrated through the prosecution witnesses</u>***:-

PW2 is the de-facto complainant. He is doing tiles contract business. His father died in 2007. He was owning 8.20 acres of Nanja and punja lands. Being the legal heirs of his father, he is in possession after his death. So for the purpose of transfer of patta, he approached the accused, on 25/06/2009. At that time, he was told that the consent letter of his sister must be produced, so also the mother. On 26/06/2009, again, he approached the accused with mother and sister. They gave separate consent letters. In turn, the accused gave him the death certificate of his father along with the revenue records and asked him to present the same before the Tasildhar office and later, approach him.

5.On the same day itself, he went to the Taluk office and dropped the petition in the box. He approached the accused, on 27/06/2009 regarding transfer of patta. At that time, he told that it may require some cost. The accused demanded Rs.8,000/-, he expressed his inability to pay the huge amount. But the accused demanded again on 23/07/2009 at about 5.30 pm. On the way to Devakottai, he met the accused and enquired about the process. Again, he demanded Rs.8,000/- as bribe, for which again he expressed his inability, it was reduced to Rs.7,000/- and asked him to pay the first installment of Rs.3,500/- and the remaining amount must be paid after completion of the process. But he had no intention to bribe the accused. So on 24/07/2009 at about 7.30 am, he approached the Vigilance Department.

6.On the basis of the complaint, the case was registered and pre-trap arrangement was made by PW10, who was working as the Inspector of Vigilance Department. On 24/07/2007, he received a complaint from PW2 and registered a case in Crime No.6 of 2009 under the Prevention of Corruption Act. He made pre-trap arrangement by making request to the Government Department to depute two persons for arranging trap process. In pursuance of the above said request at about 12.30 pm, one Swaminathan and Ramu attended the office. He introduced the above said witnesses to the de-facto complainant and made a demo by following the procedures. PW2 handed over the currency notes of Rs.3,500/-, which was demanded by the accused. It was smeared with phenolphthalein powder. Sodium carbonate solution demo was also undertaken. He told the importance of the above said demo. He prepared a mahazar mentioning the currency note numbers, which was singed by the official witnesses as well as PW2. He instructed PW2 to follow his instructions and hand over the money to the accused, when demanded. So all of them started towards the house of the accused, which was also used by him as his office. PW2 and the official witness Swaminathan were instructed to go to the house of the accused. They followed his instructions.

7.The further event is spoken by PW2. As instructed by PW10, he along with the official witness namely PW4 went inside the house of the accused. At that time, the accused demanded whether he has brought Rs.3,500/- and in pursuance of the above said demand and enquiry, he gave Rs.3,500/- to the accused. He accepted the same, counted, and put in his pocket and also told him that he has already sent a recommendation and after receiving the patta transfer order, the balance amount of Rs.3,500/- must be paid by him. So he along with PW4 returned back and as instructed made a signal.

8.The further event is spoken by PW10. He would say that on receiving the signal from PW2, along with the police team, he entered the house of the accused and the accused was identified by PW2. Sodium carbonate solution was prepared and the accused was instructed to wash his hands. It turned pink. A similar test was undertaken for other hand also, it turned pink. For that, samples were collected separately, sealed and labeled. On enquiry, the accused informed him that the amount was voluntarily paid by PW2 and he never made any demand. He handed over the money. He compared the currency notes with that of the numbers mentioned in the mahazar, which is prepared during the pre-trap arrangement. It was found tallied. Sodium carbonate solution was prepared and the shirt pocket of the accused was dipped, it also turned pink. The above said solution was collected in another containers, sealed and labelled.

9.The further process has been undertaken as per the procedure. The above said money was recovered by preparing mahazar, apart from, he has also recovered the revenue records from the house of the accused. The accused was arrested on the evening itself and undertaken search in the house of the accused. At that time, eight documents were recovered. He recorded the statement of the witnesses and prepared the observation mahazar, rough sketch, etc. He went to the Taluk office, Devakottai and collected documents.

10.The further investigation was undertaken by PW11. He received the file, on 25/05/2009 and took up further investigation, recorded the statement of the witnesses, took steps to send the material objects for chemical examination. After completing the formalities of investigation, filed a final report, on 26/07/2009 before the Special Court.

11.PW3 was accompanying PW2, on 23/03/2009 to Devakottai. At that time, PW2 met the accused and was talking to him. But he was not aware the subject matter of the conversation.

12.PW4, as mentioned above, is the shadow witness. He corroborated PW2 and PW10 with regard to material particulars of pre-trap arrangement and actual trap, etc. He also singed in all the documents, which were from the pre-trap and the process of arrest.

13.PW5 is the Firka Revenue Inspector during the period between 21/06/2010 and 31/10/2001 in Kandadevi village, Devakottai Taluk. He has also the official witness like that of PW4. He also corroborated the evidence of PW4 and PW10 with regard to pre-trap arrangement and the actual trap, etc. He also signed in the documents that have been prepared during the trial process.

14.PW6 was working as Revenue Assistant during the relevant time. He has spoken about the patta transfer proceedings, which was undertaken by the section. He received the patta transfer application from PW2, on 26/06/2009. He forwarded the same to the accused, on 29/06/2009 for report. He received a report from the accused, on 22/07/2009. He prepared a note for screening the same for further process. On 24/07/2009, he placed all the documents to the Deputy Tasildhar. Later, the patta was issued, on 27/09/2009.

15.PW7 was working as Deputy Tashildhar in Devakottai. He has spoken about the revenue records that were submitted by the accused regarding transfer of patta.

16.PW8 was the Scientific Assistant attached to Regional Forensic Science Lab, who sent material objects.

17.PW9 was working as Scientific Assistant, Chennai Forensic Lab. He has spoken about the examination that was undertaken by her over the material object, that was submitted through court. With that, the prosecution side evidence was closed.

18.The accused was put to section 313 Cr.P.C proceedings. He denied the truth of the facts deposed by the prosecution witnesses. On his side, one Kasinathan was examined as DW1 and he has stated in his evidence that on 23/07/2009 between 4.00 and 6.00 pm, he along with the accused attended the meeting in Devakottai Taluk Office in respect of the collection of land taxes. The meeting concluded at 06.30 pm. So according to him, on 23/07/2009 between 4.00 pm and 6.00 pm, the accused was not available in the office-cum-house.

19.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced him to undergo 3 years Rigorous Imprisonment and imposed a fine of Rs.1,000/- with default clause for the offence under section 7 of the Prevention of Corruption Act; and to undergo 3 years Rigorous Imprisonment and imposed a fine of Rs.1,000/- with default clause for the offence under section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act and directed the sentences to run concurrently.

20.Challenging the order of conviction and sentence, this criminal appeal has been preferred.

21.Heard both sides.

22.Appeal against conviction and sentence. Before we go into the disputed question of facts, the admitted facts may be kept in mind.

23.It is not disputed that the appellant was working as Village Administrative Officer during the relevant period in the village called 'Kosilamkuty'. It is also not in dispute that for the purpose of transferring patta in respect of the above said property, that was standing in the name of PW2's father, a request was made seeking transfer of patta.

24.Now the contention on the part of the appellant is that on the basis of the request made by PW2 and relevant records, a report was already submitted by him to the competent authority namely the Tashildhar, Devakottai, for transfer of patta. According to him, there is no occasion for him to demand bribe and accept the same.

25.It was the defence to the effect that the above said amount of Rs.3,500/- was put in his pocket, when he was taking bundle in the downstairs. The shed in the office-cum-residence having in the upstairs portion. That is the usual and simple defence.

26.PW2 supported the case of the prosecution, during the chief examination only. Later he was recalled and cross examined. During that period, he turned hostile. The defence version was admitted by him to the effect that he only put the money in the pocket of the accused during his absence in the office. These are the backgrounds.

27.Now let us go to the chronological events. During the course of chief examination, PW2 stated that on 25/06/2009, he approached the accused for transfer of patta. At that time, no amount was demanded by him. Similarly, on 26/06/2009 also, he approached him. At that time also, there was no demand. On 27/06/2009, there is a demand of Rs.7,000/-. He waited for sometime and on 22/07/2009, on the basis of the request made by the accused, PW2 for change of patta, report was submitted to the competent authority, on 22/02/1999 itself. On 23/03/2002, PW2 contacted the accused regarding the process. At that time, he insisting demand. On 24/07/2009, he made a complaint. On the same day itself, trap was laid. This is the sequence of events.

28.As mentioned earlier, since already recommendation was made by him, on 25/02/2009, there was no occasion for him to demand the bribe. But PW2 has stated during the chief examination to the effect that on 27/06/2009 itself, there was a demand.

29.So now the question, which arises for consideration is that since because, he has turned hostile during the course of cross examination, the demand on 27/06/1995 and 23/07/2009 can be accepted to be proved by the prosecution.

30.After four months of the chief examination, he was cross examined and only at that time, he turned hostile. Regarding the demand, on 23/03/2009, PW3, who stated to have present at the time also, turned hostile. He would say that on 23/07/2009 along with PW2, he also went to Devakottai and midway, they saw the accused near Thirupatthur road and there was conversion between PW2 and the accused, but what sort of chatting was undertaken was not known to him. There is no corroboration with regard to the final demand, on 23/07/2009.

31.Reading of the cross examination of PW3 shows that he admitted the initial payment, on 23/06/2009 and on 23/07/2009, he admitted that complaint under Ex.P6 was written by him. But in the later portion with regard to the trap proceedings, he denied the entire events. He also denied that PW4 namely Swaminathan accompanied him, when he entered into the office of the accused. Strangely, he has stated that he put the money in the pocket of the shirt, which was hanging in the office portion. On that particular date, there was no demand by him and acceptance. But in the next line, he denied the suggestion that no demand was made by the accused and accepted. So reading of the cross examination shows that he was in double mind at one point of time. He wanted to support the defence. Another point of time, he wanted to support the prosecution version and the complaint given by him.

32.So the question, which arises for consideration is whether what sort of conclusion that can be reached by this court on the basis of the change of mind. Why double mind occurred is not clear on record, the prosecution wanted to treat PW2 as hostile. But the accused made objection. Since because only a portion of his earlier statement was resiled. So in those circumstances, the trial court relied upon the evidence of PW4 the shadow witness. During the course of his evidence, he would say that he participated in the pre-proceedings and nothing on record to disbelieve his evidence, with regard to the pre-trap arrangement. With regard to the trap also, he would say that as directed by PW11, trap laying officer, he accompanied PW2 to the office and at that time, enquiry was made by PW2 with regard to the transfer of patta with the accused. The accused demanded Rs.3,500/-, which was asked by him. The above said amount was handed over, which was touched with phenolphthalein powder, at the time of pre-trap arrangement. Even though, his evidence is usual like that of the any other case, we can see the evidence of the shadow witness. But his evidence is to be accepted in the light of the partial evidence that was spoken by the PW2 about the demand of money. In a normal situation, when the de-facto complainant turned hostile, the evidence of the shadow witness without any corroboration are not accepted by this court, because the experience has shown that in all the cases of trap usually and normally and that too similar evidences are being let in by the prosecution. That is why, in the absence of any corroboration from the de-facto complainant, shadow witnesses used to be discarded. But here, as mentioned earlier, PW2 was half-hearted. So necessarily, the evidence of PW4 has to be accepted with regard to the trap events.

33.We can also corroborate with regard the above said events by other witnesses also. PW5 was working as Revenue Inspector during the relevant time at Kandadevi village. As per the direction by the Tashildar, Devakottai, on 24/01/2009, she went to the office-cum-residence of the accused at about 4.45 pm. She witnessed the enquiry that was made by the PW11. She would say that on enquiry, the accused stated that only PW2 voluntarily gave the money for his expenses. He already sent a recommendation for transfer of patta. So her evidence is also taken into account showing the circumstance that PW11 has made enquiry with the accused person with regard to the acceptance of money. From her evidence, it is seen that the patta transfer request was received by the Tashildhar, Devakottai, on 26/06/2009. From her evidence, it is also seen that before the date namely 24/07/2009, he made recommendation for transfer of patta. His evidence was relied on by the accused to say that there was no occasion for demanding money in the above said circumstances. So her evidence can also be taken into account for the limited purpose as stated above.

34.Let us go to the defence version. As mentioned earlier, the report that was made, on 20/02/2000 was heavily relied upon, for which, they wanted to draw the support from the evidence of PW5.

35.As mentioned earlier, PW6, who was working as Assistant on 03/09/2009 in Devakottai Taluk office wherein, she has stated that the request made by PW2 was received through post on 26/06/2009. As per the procedure, they made entry in the relevant records. On 29/06/2009, the above said request was forwarded to the accused for making enquiry and report. The accused received the request and acknowledged the same. The report was received, on 22/07/2009 from the accused. Again that was entered in the relevant records. A note was prepared by him for further action. On 24/07/2009, the above said request was placed before the Headquarters Deputy Tahsildhar. But subsequently, on 27/07/2009, the Vigilance Department officers, seized the documents from him. Similarly, PW7, who was working as Deputy Headquarters Tashildhar during the relevant time, has stated that the request was received, on 26/06/2009 and further process was undertaken and he signed in the patta transfer order, on 24/07/2009. Later that was recovered by the Vigilance Department. He would admit that the report was sent by the accused on or before 22/07/2009. so according to him, his duty was over by sending the report and in the further process, no role or duty to be performed by the accused.

36.PW10 has admitted that on 22/07/2009 itself, a report was made by the accused and on the date of trap, no other work remained to be performed by the accused.

37.In the light of the above said circumstances and evidence, now the contention on the part of the accused that the sanctioning authority has not taken into account the above said aspect, while granting sanction. According to him, had it been noted by the sanctioning authority that already report was submitted by him and no other duty remained to be performed, then there is no occasion for the accused to demand bribe and acceptance would not have been done by him, he would have refused sanction.

38.No doubt, this is the lapse on the part of the prosecution to correctly bring out those facts on record. The prosecution ought to have mentioned that even though, a report was made by the accused, on 22/07/2009 itself, without disclosing the same and by suppressing the above fact, the accused demanded money. So because of this lapse, in the charge sheet, the above said particular fact omitted to be mentioned.

39.At this juncture, the learned Additional Public Prosecutor would submit that even as per the statement given by PW2, the above said amount has been demanded by the accused for meeting out the expenses of the office. This itself is an offence punishable under section 13(1)(d) of the Act. We need not go in depth.

40.Now the question, which arises for consideration is whether because of the lapse on the part of the Investigating Officer any prejudice has been caused to the accused in making defence. Here, he made his defence even at the initial stage itself. Even during the course of cross examination of PW2, it was suggested to him, on 22/02/2009 itself, a report was made by him. But PW2 has stated that he was not aware of the said report. So the contention on the part of the accused that because of the above said lapse during the course of investigation and the final report, prejudice has been caused cannot be accepted at all. More-over, this lapse on the part of the prosecution will assume importance, only if the accused is expected to rebut presumption under section 20 of the Prevention of Corruption Act. Here, he has given explanation that the money was given by PW2 voluntarily. During the course of trial, a suggestion was made to PW2 that the money was put by him in the shirt pocket. If it is really so, sodium carbonate solution test would not have turned positive. So the contention on the side of the accused that the above said money was voluntarily put by PW2 in his pocket is out of place and cannot be accepted at all. As stated above, naturally, presumption under section 20 of the Prevention of Corruption Act, can be raised to the effect that the accused accepted the money as illegal gratification for having performed his duty.

41.The next contention on the part of the accused is that there was motive between PW2's villagers and him over taking of gravel sand from the poromboke land for leveling the ground during the performance of Kumbabishekam in the temple situated in Palavai village. It was suggested to him that the above said request was denied by him, over which, there was a motive. But absolutely, there is no corroborative evidence and no circumstances also available.

42.The learned Additional Public Prosecutor would submit that even though, PW2 turned hostile, in the complaint Ex.P6, he has given details with regard to the initial demand. But, as mentioned earlier, during the course of chief examination, PW2 supported himself with regard to the earlier demand, only acceptance, on the date of trap, he turned hostile.

43.Another ground is that on the date of the alleged demand I.e., 23/07/2009 between 04.00 pm and 06.30 pm, the accused was attending a meeting in Devakottai Taluk office over the collection of the land revenue. He wants to draw support from DW1, who was his colleague. He would say that meeting was concluded at about 6.30 pm and PW2 and PW3 did not meet the accused at that time. On the date of demand, PW3 turned hostile and stated that he was not aware of the conversation that took place between PW2 and the accused. His evidence relied upon to the limited purpose to the effect on 23/07/2009 near Thirupatthur road, the accused was spotted by PW2 and PW3. So in the above said factual circumstances, the conclusion that has been reached by the trial court cannot be found fault.

44.For all the reasons stated above, this court is of the considered view that the findings arrived at by the trial court does not require any interference.

45.In the result, this criminal appeal fails and the same is dismissed. Conviction and sentence are confirmed.

20/12/2022

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G.ILANGOVAN, J

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To,

1.The Special Judge,
Special Court for trial of cases
under Prevention of Corruption Act,
Sivagangai.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Sivagangai,

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

Crl.A(MD)No.315 of 2017

20.12.2022