



Crl.A.(MD) No.91 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2022

DELIVERED ON: 04.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

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The State represented by
the Public Prosecutor,
High Court, Madras,
(V& AC),
Tirunelveli.
Crime No.2 of 2005

... Appellant

vs.

R.Sankarakumar

... Respondent

PRAYER:- This Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the judgment of acquittal passed in Special Case No.14 of 2014 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli dated 31.12.2015.

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

For Respondent : Mr.R.Anand



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JUDGMENT

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Challenging the judgment of acquittal passed in Special Case No.14 of 2014 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli dated 31.12.2015, this Criminal Appeal has been filed.

2.P.W2, by name Muthuramalingam lodged a complaint with the appellant stating that the respondent demanded and accepted a sum of Rs.1,000/- as an illegal gratification for the purpose of performing his official duty of disbursing the arrear amount of Rs.2,87,283/- to him. Based upon the complaint given by him, a case was registered in Crime No.2 of 2005 and charges were framed against the respondent under Section 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and after completion of the trial, the trial Court acquitted the accused finding that the offence has not been proved beyond all reasonable doubt. Challenging the judgment of acquittal, the present appeal has been preferred by the State.

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

P.W2's grandmother, namely Ganapathiyammal, who was working in the Union Middle School, Koliyankulam, died on 18.05.2002. The arrear amount of



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Rs.2,87,283/- was due to be paid to the aforesaid Ganapathiyammal and an order was also passed to that effect. That amount was to be paid to P.W2's mother. Power deed was also executed by other legal heirs of Ganapathiyammal in favour of his mother.

4.On 18.01.2005 at about 10.30 am., P.W2 submitted a petition to the Commissioner, Panchayat Union Office, Valliyoor. He advised P.W2 to contact the Office Manager. The Office Manager also informed P.W2 that legal opinion must be sought from the Government Advocate. So, on 30.01.2005, P.W2 contacted the Government Advocate and received the legal opinion. Again he contacted the aforesaid Commissioner and once again the Commissioner told P.W2 to come after two days. On 03.02.2005, at about 10.30 am., P.W2 again contacted the respondent and at that time, he demanded Rs.1,000/- for preparing the Bill etc., but P.W2 was not willing to bribe the accused. So, he lodged a complaint under Ex.P2.

5.Further event was spoken by P.W12, by name Rajamohan, who was working as Inspector at that time. He registered the case in Crime No.2 of 2005 for the offences punishable under Section 7 of the Prevention of Corruption Act, 1988. He prepared the First Information Report, took up further process



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and invited two official witnesses for assisting the pre-trap and trap arrangements. So, on his request, one K.V.Pazhanisamy and one K.Arumugam appeared before him at about 01.30 pm., He introduced the aforesaid official witnesses to P.W2. P.W2 intended to hand over the bribe amount of Rs.1,000/- to the accused and it was smeared with phenolphthalein powder. They prepared a Mahazar noting down the currency note numbers and usual process of preparation of sodium bicarbonate solution was also undertaken and the importance of the preparation was informed by him to the official witnesses as well as P.W2. At about 02.30 pm., the police team along with the official witnesses as well as P.W2 started from their office in a Jeep and went to the office of the accused. As advised by P.W12, P.W2 went into the office of the accused followed by the witness Pazhanisamy and the police team were hiding and watching the events.

6.Further event is spoken by P.W2. He would say that at about 03.15 pm., he along with official witnesses went inside the office of the accused and at that time, the accused asked him whether he has brought the money. P.W2 handed over Rs.1,000/- to the accused, which was accepted by him and the same was put on the left pant pocket. As advised by P.W12, both of them came out of the office and made a signal to the police team.



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7. Further event is spoken by P.W12. He would say that on receiving the signal from P.W2, all other went inside the office of the accused and P.W2 identified the accused to the police team. On seeing the police team, the accused shocked. Sodium bicarbonate solution was prepared and the accused was advised to wash his left hand. He followed the instructions and washed his left hand. It turned pink. That was collected in a container, sealed and labelled. Similarly, another container was prepared and his right hand was also dipped. It also turned pink and it was collected in another container, sealed and labelled.

8. On enquiry, the accused handed over the money, which was received as bribe amount from P.W2 and he compared the currency note numbers with the note numbers that was mentioned in the Mahazar, which was prepared at the time of pre-trap arrangement. He found it tallied. The pant pocket of the accused was also dipped in another sodium bicarbonate solution preparation and also it turned pink. That was also collected in another container, sealed and labelled. The accused was arrested and remanded to judicial custody. The house of the accused was searched at about 06.00 pm., and nothing was seized.



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9.Further investigation was undertaken by P.W15. He took up the investigation on 04.02.2005 and recorded the statement of the witnesses, took steps to send the material objects for chemical examination, made a request for giving sanction to P.W1. Later, sanction order was received and he recorded the statement of the other witnesses. After completing the official formalities, he filed a final report alleging that the accused has committed the offence punishable under Section 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

10.P.W3, as noticed above, is the shadow witness and he has also corroborated P.W2 in material particulars with regard to the pre-trap arrangements, actual trap as well as the arrest of the accused etc facts. P.W4 is the mother of P.W2. She has identified her signature in the petition, which was filed for claiming the arrear amount. P.W5 has spoken about the regularization process of the teachers in Tirunelveli District.

11.P.W6 has spoken about the order, which was passed for the arrears amount of the deceased for the period /from 01.04.1981 to 01.04.1998, which was also produced the order and Ex.B13. P.W7 has spoken about the



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registration of the power deed, which was executed by the other legal heirs of the deceased in favour of Rukmaniammal. P.W8 has spoken about the clearing process of the file. P.W9 has spoken about the attendance register that was maintained by him in the office. P.W10 has spoken about the clearing of the file as well as the event that took place on 03.02.2005, when the accused alleged to have demanded and accepted the money from P.W2 as bribe and the arrest etc.,

12.P.W11 is not a material witness. P.W13 has spoken about the examination of the material object that has been sent for chemical examination and P.W14 is not a material witness. With that examination of P.W15, prosecution side evidence was over and the accused was put on Section 313 Cr.P.C. questioning process and he denied the incriminating evidence that was filed by the prosecution. On the side of the accused, 2 witnesses have been examined and D.W1 has spoken about the attendance register pertaining to the relevant period and he has also spoken about the events that took place on 03.02.2005. D.W2 has spoken about the representation that was made by the employees' association, which is marked as Ex.B1.

13.After the completion of the evidence on either side as stated above, the trial Court came to the conclusion that the offence under Sections 7 and 13



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(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 have not been proved beyond all reasonable doubt.

14.The point for consideration is whether the judgment of acquittal that has been passed by the trial Court is sustainable.

15.It is not in dispute that P.W2 presented a petition claiming arrears of amount of Ganapathiyammal, who was working in the Union Middle School, Koliyankulam. In what capacity she was working is not clear on record and that is also not relevant for discussion. So, he presented a petition claiming arrears of amount on behalf of Rukmaniammal, who has been examined as P.W4. She has also identified her signature in the petition. This fact has also not been denied by the accused, because based upon the aforesaid petition only, further process of claiming the arrear amount has been made as spoken by the prosecution witnesses as mentioned above.

16.It is not necessary to repeat all those things once again. So, it is suffice to say that P.W2 presented a petition for claiming arrear amount that was processed and final order was also passed, but the problem arose when preparing the Bill at the hands of the accused persons.



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17.P.W2 would say that on 03.02.2005, at about 10.30 am., when he contacted the accused person for clearing the file, he demanded Rs.1,000/-. So, this is the first demand, according to P.W2. Except his oral evidence on this aspect, no other corroborative evidence is available with regard to the aforesaid demand on 03.02.2005 at about 10.30 am., It is also seen that no formal complaint was made by him with the Commissioner about the illegal demand of bribe. The reason for non-informing the Commissioner on immediately is also not explained by him. Now whatever it may be, there is no corroborative evidence to show that the alleged demand was made on 03.02.2005 at about 10.30 am., by the accused.

18.The next demand is made, according to the prosecution, during the trap. As I mentioned earlier, at about 03.15. pm., P.W2 along with P.W3 and police team went to the office of the accused. P.W2 and P.W3 entered into the office and according to P.W2, the accused enquired him whether he has brought the money that was demanded by him. He handed over Rs.1,000/-. This is corroborated by P.W3 to the effect that P.W2 enquired about the file and at that time, the accused enquired him whether he has brought the money. He handed over the same to the accused. Pointing out these two facts, it is contended by



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the learned Additional Public Prosecutor to the effect that the demand has been clearly proved beyond all reasonable doubt.

19.*Per contra*, it is the contention of the part of the accused that during cross-examination, P.W2 supported in the defence version, wherein he has stated that the accused did not demand any bribe amount. However, he approached the appellant office, since even after two days on receipt of legal advise, no proper step was taken to clear the file. So, he discussed the same with his friends and on their advise, he lodged the complaint under the impression that if the complaint is given, then the file can be easily moved. So, it is the case of the defence to the effect that when P.W2 has himself turned hostile and did not support to the case of the prosecution, the evidence of P.W3, the shadow witness, is without any corroboration and the order of finding acquittal passed by the trial Court requires no interference.

20.No doubt that P.W2 turned hostile after a lapse of 4 years from the date of chief examination. In the meantime, according to the learned Additional Public Prosecutor, P.W2 has been won over by the accused to his advantage. So, the possibility of such winning over P.W2 by the accused may not be ruled out, because it is highly unbelievable that P.W2 lodged the complaint with a



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view to clear the file quickly. So, as contended by the learned Additional Public Prosecutor, such a probability cannot also be brushed aside. But it is seen that P.W2 is not a reliable person, because of his own contradictory statements before the Court.

21. Now, coming to the evidence of P.W3. It is an argument on the side of the defence to the effect that during the course of investigation, this witness has not spoken specifically about the enquiry that was alleged to have been made by the accused with regard to the bribe amount to P.W2. During the course of chief-examination, he made an improvement and in that context, the evidence of P.W15 is pointed out, wherein he has admitted that P.W3 during the course of investigation has not stated to the effect that enquiry was made by P.W2 regarding the status of the file, even P.W3 was admitted during the course of evidence that he was not examined by any one in respect of the case, after he signed in the Mahazar. So, from the evidence, it is seen that he was not examined by the Investigation Officer during the course of investigation. So, according to the defence, it is an improvement, which was made by P.W2. So, no reliance to be made on his evidence.



22.It is the further contention on the part of the defence to the effect that P.W3 himself is not a genuine person and he was also an accused in a corruption case and disciplinary proceeding was also initiated against him, wherein punishment was also imposed upon him. So, the learned counsel for the respondent would heavily rely the character of P.W3 to sustain his argument to the effect that he is not a genuine person and whose assistance has been obtained by the appellant thinking that a person of such character will help the prosecution case. How this important aspect escaped the notice of the Investigation Officer or the deputation officer to help the trap process is not known. A person, who is having a tainted character, accusing another person as if that person demanded and accepted the bribe amount, according to the defence, should not be permitted to be taken as evidence for convicting a person.

23.Here, it is seen that P.W3 is not a genuine person. He was already faced charges for receiving the bribe amount. So, it is highly unsafe to rely upon such person to say that there was demand and acceptance of bribe amount by the accused from P.W2. So, both P.W2 and P.W3 are not the reliable persons. So, the question, which arises for consideration, is whether on the basis of the circumstantial evidence, a guilt of the accused can be verified.



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24.The learned Additional Public Prosecutor would rely upon the circumstantial evidences. He would submit that on the particular date of trap, ie., on 03.02.2005, the arrest of the accused has been clearly established by the prosecution through the evidence of D.W1 and D.W1 has stated that P.W2 placed the money in the table of the accused and ran away and at that time, the accused shouted that the accused placed the money and asked the others to catch him. But a case of this nature requires proper proof through the reliable evidence. The circumstantial evidence is not sufficient enough to prove the guilt of the accused, when a specific demand and acceptance must be proved.

25.Even though P.W2 has initiated the action over the demand of money during the course of cross-examination as noted above, he turned hostile. In such circumstances, it is the consistent view of the Court that recovery of tainted money alone is not sufficient to prove the guilt of the accused, even if the evidence of P.W2 and P.W3 is accepted. For that purpose, he relied upon number of judgments right from *B.Jayaraj Vs. State of Andhra Pradesh* reported in (2014) 13 SCC 55, *Satyanarayana Murthy Vs. State of Andhra Pradesh* reported in (2015) 10 SCC 152 and *N.Sunkanna Vs. State of Andhra Pradesh* reported in (2016) 1 Supreme Court Cases (Cri) 544, wherein it has been consistently held that mere recovery of tainted money from the accused



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without proper proof of demand and acceptance is not sufficient enough to draw the presumption under Section 20 of PC Act for recording the conviction.

26. More over, it has been consistently held by the Hon'ble Supreme Court and other Courts to the effect that in a case of acquittal, unless a strong perversity is brought on record by the prosecution, the judgment of acquittal should not be lightly interfered. It has also been held that the judgment that was taken by the trial Court is only a probable view. The appellate Court cannot interfere in the absence of any perversity as I mentioned above. So, following the guidelines that has been issued in the aforesaid cases, when we look the factual aspects of this case, it can be safely concluded that it is not safe to convict a person on the unreliable testimony of P.W2 and P.W3.

27. The malady in criminal justice system, which is facing due to the hostile nature of the prosecution witnesses has also been discussed by the Courts in various occasions. Here, a case of bribe ended in acquittal because of the non-cooperation of P.W2. So, the course open to the prosecution is to initiate action against P.W2 as has been directed by this Court, in numbers of cases. So, that is the only available course that can be adopted by the prosecution in this matter of issue. So, I find that the judgment of acquittal that



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has been passed by the trial Court requires no interference. This Criminal

Appeal stands dismissed, accordingly.

Index : Yes / No
Internet : Yes / No
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04.07.2022

To

- 1.The Judge,
Special Court for Trial of Cases
under Prevention of Corruption Act, Tirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA, J.

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**judgment made in
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