IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.112 of 2018

S.Saravana Kumar ... Appellant

Vs.

State Rep. by Inspector of Police
Vigilance and Anti Corruption
Chennai City-I Detachment
Chennai
Cr.No.19/EC/05/CCI ... Respondent

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, praying to set side the impugned Judgment delivered in Spl.C.C.10 of 2007 dated 08.02.2018 on the file of the Special Judge /Chief Judicial Magistrate, Tiruvallur and acquit the appellant/A1 by allowing this appeal.

For Appellant :Mr.V.Ramamurthy

For respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed to set side the impugned Judgment in Special Case No.10 of 2007 dated 08.02.2018 on the file of the Special Judge /Chief Judicial Magistrate, Tiruvallur and acquit the appellant/1st accused.

2. The respondent/Police registered a case in Crime No.19/EB/05/CCI against the appellant herein and yet another accused for the offence under Section 7 of the Prevention of Corruption Act, 1988. Based on the complaint, trap proceedings were initiated and after completion of trap proceedings and investigation, the offences were altered into Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The charge sheet was laid before the Special Judge / Chief Judicial Magistrate, Tiruvallur. The learned Special Judge had taken the charge sheet on file in Special Case No.10 of 2007 and after completing the formalities, framed the charges against both the accused persons for the offences under Sections 7, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

3. After framing the charges, in order to substantiate the charges levelled against the accused persons, during trial, on the side of the prosecution, totally 14 witnesses were examined as P.W.1 to P.W.14 and 24 documents were marked as Exs.P.1 to P.24 besides 9 material objects were exhibited as M.O.1 to M.O.9.

4. After completing the examination of the prosecution witnesses, incriminating circumstances which were culled out from the evidence of the prosecution witnesses, were put before the accused persons by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5. On conclusion of trial, after hearing the arguments advanced on either side, considering the materials, the trial Court had not found 2nd accused guilty and thereby, acquitted the 2nd accused from all the charges levelled against him. However, the trial Court found A1 guilty for the

offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo two years rigorous imprisonment and to pay fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of three months for the offence under Section 7 of the Prevention of Corruption Act, 1988; to undergo two and half (2½) years rigorous imprisonment and to pay fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of three months for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The sentences imposed on A1, were ordered to run concurrently. Challenging the said Judgment of conviction and sentence, the 1st accused has filed the present appeal before this Court.

6. The case of the prosecution is that the appellant/1st accused was working as a Line Inspector and the 2nd accused was working as Junior Engineer in the Tamil Nadu Electricity Board, J.J.Nagar Chennai-50. The de-facto complainant was running an industry at No.17, Periyar Nagar, Srinivasa Nagar, Padi, Chennai and in order to shift the same to the

address No.18-C Bharathiar Nagar, Srinivasa Nagar, Padi, Chennai, on 12.12.2005, he approached the 2nd accused for getting industrial E.B. Service connection with 10 H.P. Capacity in the name of his wife, for which, the 2nd accused asked the de-facto complainant to approach the appellant/1st accused and when the de-facto complainant approached the appellant/1st accused, the appellant demanded bribe of Rs.1,000/- per H.P. and in total, he demanded bribe of Rs.10,000/- for 10 H.P. apart from the regular charge of Rs.10,250/- towards Government Deposit. Hence, the de-facto complainant again approached the 2nd accused and told that the appellant/1st accused was demanding Rs.10,000/- towards bribe amount to get the E.B. Connection, for which, the 2nd second accused asked the de-facto complainant to act as per the instructions of the appellant/1st accused and complete his work. After a week, on 20.12.2005 at about 11.30 a.m., the de-facto complainant again went to the same office and met the appellant/1st accused and at that time, the 2nd accused was also there. When the de-facto complainant told them that he was not having that much money, the appellant/1st accused told him to give Rs.14,000/- for the present and asked him to pay the balance amount after 3 days. Since the de-facto complainant was not willing to pay the illegal gratification to the accused, he lodged a complaint before the respondent/Police on the same day at about 2.00 p.m. On receiving the complaint, the Inspector of Police registered a case as against both the accused persons in Crime No.19 of 2005 for the offence under Section 7 of Prevention of Corruption Act, 1988 and based on the complaint, the Trap laying Officer/P.W.13, laid trap proceedings, during which time, both the accused were caught red-handed and they were arrested. After investigation, the respondent/Police filed alteration report and laid charge sheet against both the accused before the Special Judge/Chief Judicial Magistrate, Tiruvallur. The learned Special Judge, on conclusion of trial, acquitted the 2nd accused, however, convicted the appellant/1st accused as stated above. Hence, the present appeal has been filed before this Court by A1.

7. The learned counsel for the appellant/1st accused submitted that the charge itself has been wrongly framed as against the appellant/1st accused. The charge against the appellant//1st accused is that he demanded a sum of Rs.10,000/- towards bribe amount for himself and for the other accused, namely the 2nd accused on 12.12.2005 at about 11.30 a.m. from the de-facto complainant for giving new E.B. service connection in the name of his wife and in continuation of the same transaction, again the appellant/1st accused demanded a sum of Rs.3,750/- as bribe on 20.12.2005 and subsequently, accepted the bribe amount of Rs.3,750/- in a tea shop, which is nearer to his office and demanded to pay the balance bribe amount of Rs.5,000/- within 3 days. But according to prosecution, the appellant/1st accused demanded bribe of Rs.10,000/- and if the appellant/1st accused had received a sum of Rs.3,750/- as alleged by the prosecution, then the balance bribe amount to be received is Rs.6,250/-. But the prosecution has stated that the appellant/1st accused demanded to pay the balance amount of Rs.5,000/- within 3 days. Further he submitted that the charge should be framed only based on the material

records and not on suspicion or surmises and conjunction. Even in the complaint, it has not been specifically stated as to how the bribe amount of Rs.3,750/- was received by the appellant/1st accused when the specific case of the prosecution is the appellant/1st accused received a sum of Rs.14,000/- from the de-facto complainant and the entire sum of Rs.14,000/- are tainted money. Therefore, the charge itself is not specific and it consists of ambiguity.

7 (a). The learned counsel for the appellant/1st accused submitted that there was no probability for the demand and acceptance of bribe by the appellant/1st accused to give 3-phase service connection with 10 H.P. Capacity by the Tamil Nadu Electricity Board. He also submitted that, when a customer gives an application for new E.B. service connection, if any of the authorities deny or delay to give connection in anticipation of bribe amount, even after remitting the due charges, then there is a probability that the authorities demanded bribe amount. But in this case, no such thing had happened. As per the version of the prosecution, the

date of demand is on 12.12.2005. But neither the de-facto complainant, nor his wife, had submitted any application for new service connection in the EB office. The appellant was working only as a Line Inspector and without any application for new service connection, the appellant cannot demand bribe from the de-facto complainant to get a new service connection. Further, from 12.12.2005 to 20.12.2005, the de-facto complainant did not attempt to lodge any complaint either to the Higher Officials of the appellant/TNEB or to the respondent/Police in respect of demand of bribe by the appellant/1st accused. According to prosecution, the complaint/Ex.P.16 was lodged only on 20.12.2005 at 2.00 p.m. Ex.P.17 is FIR. The entrustment Mahazar proceeding was completed at 3.30 p.m. The de-facto complainant/P.W.2 has deposed that he gave the application for EB Service connection while giving bribe amount to the appellant/1st accused at about 6.00 p.m., which shows that no application had been submitted for getting E.B. connection by the de-facto complainant at the time of lodging the complaint to the respondent/Police on 20.12.2005 at 2.00 p.m. Further, during cross examination, the de-facto complainant/P.W.2 categorically stated that when he went to the EB office with money in the morning hours of 20.12.2005, he did not see the appellant/1st accused and therefore, there was no possibility for demand of bribe from the de-facto complainant by the appellant/1st accused either on 12.12.2005 or even on 20.12.2005. The learned trial Judge failed to appreciate the evidence in right perspective.

7 (b). The learned counsel for the appellant submitted that when the 2nd accused is the competent person to pass orders on service connection and that the appellant/1st accused was only a Line Inspector, he could not be the right person either to receive the application or to accord sanction for service connection. When the de-facto complainant approached the 2nd accused, he has asked the de-facto complainant to meet the appellant/1st accused and when the appellant/1st accused demanded bribe, the de-facto complainant informed the same to the 2nd accused, for which, the 2nd accused has advised the de-facto complainant to act as per the instructions of the appellant/1st accused, which means

that the 2nd accused has also demanded money. Further, when the trap proceedings were completed, the de-facto complainant told the Trap Laying Officer that he gave Rs.14,000/- to the appellant/1st accused and after recovery of money, when they counted the money, only Rs.13,500/- was available and when they asked the appellant/1st accused as to what had happened to the balance amount of Rs.500/-, the appellant/1st accused informed that he had given the same to the 2nd accused. Subsequently, when the Trap Laying Officer asked about the money given to the 2nd accused, the 2nd accused informed that he had given the same to P.W.6/contract labourer and subsequently, the said amount of Rs.500/- was recovered from P.W.6. When that being the case, the 2nd accused is also part of the demand and acceptance of bribe money, whereas the 2nd accused alone was acquitted from all the charges by the trial Court from the very same set of materials and the appellant/1st accused alone was convicted by the trial Court. The trial Court should have convicted the 2nd accused also, either for the same charges or for abetment. But the trial Court totally acquitted the 2nd accused and convicted the appellant/1st accused alone without any materials, which is perverse.

7. (c) Further, the learned counsel for the appellant/1st accused submitted that the entire Rs.14,000/- is not the bribe amount. When the de-facto complainant was handing over the amount to the Trap laying Officer based on the complaint and advise by them, the Trap Laying Officer should have smeared the Phenolphthalein powder only in the bribe amount and not in the entire amount. Even as per the version of the prosecution, the entire amount is not a bribe amount and there is neither independent witness, nor supportive evidence or even any document to show that there was prior demand and that the prosecution has not proved the prior demand alleged to have been made by the 1st appellant/accused. Further, he also submitted that, soon after the trap laying proceedings leading to effecting recovery, the Trap Laying Officer should have obtained explanation from the appellant/1st accused, but he has failed to offer his explanation. Had he had asked the explanation, the

appellant/1st accused would have given the specific reason for the amount obtained from the de-facto complainant. The usual procedure in the office is that when a customer approaches them for EB connection, they used to inform about the charges like Earnest Money Deposit (EMD), Service Connection Charge, Meter Caution Deposit (MCD), Development charge and other expenses for the materials to be provided normally to the customer. Therefore, approximately, they used to give money to the staff who are working in the office. They used to collect and remit the amount and subsequently, inform them to give service connection. Like that, when the de-facto complainant approached the 2nd accused, the 2nd accused sent the de-facto complainant to the appellant/A1 and when he approached the appellant, he asked the de-facto complainant to bring money and when he brought it, purposefully, in order to take vengeance against the Department for not effecting service connection immediately, the de-facto complainant foisted false case against the appellant/1st accused. He further submitted that it is not possible to lodge complaint on the same day and the entire proceedings to take place on the same day. Further, though money was recovered in the trap proceedings, it was not immediately sent to the Court and it was sent only two days later and there was no acceptable explanation offered by the prosecution. Therefore, the prosecution has failed to prove its case beyond all reasonable doubts.

7 (d). The learned counsel for the appellant further submitted that, when two views are possible, the view which favours the accused has to be taken into consideration and the appellant/1st accused has to be acquitted. But, in this case, the trial Court failed to appreciate the evidence properly and from the very same materials and evidence, the trial Court acquitted the 2nd accused alone by extending the benefit of doubt and not extended the same benefit to the appellant/1st accused. Therefore, the Judgment of the trial Court is perverse and accordingly, the learned counsel for the appellant/A1 submitted that the conviction and sentence imposed on A1 are liable to be set aside.

8. The learned Additional Public Prosecutor appearing for the

respondent police submitted that, when the de-facto complainant had approached the appellant/1st accused, who was the Line Inspector in the Tamil Nadu Electricity Board, J.J.Nagar, Chennai, for getting E.B. Connection, as per the instructions of the 2nd accused who was working as Junior Engineer in the office of the appellant/1st accused, the appellant/1st accused had demanded bribe and subsequently, he had accepted the bribe amount from the de-facto complainant and the same was also recovered and that the prosecution proved the same through oral and documentary evidence. From the evidence of the de-facto complainant who was examined as P.W.2, the prosecution proved the prior demand made by the appellant/1st accused. The shadow witness who all along accompanied with the de-facto complainant to the office of the accused, was examined as P.W.4 and from his evidence, the prosecution has proved the subsequent demand and acceptance of bribe by the appellant/1st accused. The Trap Laying Officer was examined as P.W.13 and he has clearly narrated the entire incident and recovery of tainted money from the appellant/1st accused. The evidence of

P.W.4/shadow witness corroborated with the evidence of P.W.13/Trap Laying Officer and the evidence of P.W.2/de-facto complainant corroborated with the evidence of P.W.4. Further, the evidence of P.W.10 who was working as Inspector of Assessment in the office of the accused, clearly shows that the de-facto complainant/P.W.2 had already remitted the official payment of Rs.10,250/- for EB service connection. Therefore, the amount obtained by the appellant/1st accused is not a legal payment and it is only an illegal gratification. Once the prosecution proved the demand, acceptance of bribe and the recovery of the money, Section 20 of Prevention of Corruption Act comes into play. It is settled proposition of law that once the prior demand, acceptance and recovery of money are proved, there is a presumption under Section 20 of the Prevention of Corruption Act that the accused had accepted the gratification other than the legal remuneration and the accused has to rebut the presumption in the manner known to law and unless the contrary is proved by the accused, the Court can safely come to the conclusion that the accused has committed the offence under Section 7 of the Prevention of Corruption

Act. In this case, from the oral and documentary evidence, the prosecution has proved the foundational fact beyond all reasonable doubts in the manner known to law and that the appellant/1st accused demanded and accepted the illegal gratification from the de-facto complainant. But the appellant/1st accused has not rebutted the presumption in the manner known to law. Therefore, the trial Court had rightly appreciated the evidence and convicted the appellant/1st accused. However, there was no direct evidence to show that the 2nd accused also demanded bribe and accepted the same from the de-facto complainant, either directly or the 2nd accused had given authorization to the appellant/1st accused to receive the bribe amount on his behalf. Further, the appellant/1st accused had also not given any explanation even in the cross examination as to whether he had obtained the bribe money for and on behalf of the 2nd accused also. Therefore, in the absence of the same, the trial Court had rightly acquitted the 2nd accused. Since the 2nd accused was acquitted, it does not mean that the amount obtained by the appellant/1st accused is not a bribe amount and that he is also entitled to get acquittal automatically based on the acquittal of the 2nd accused. The trail Court had rightly appreciated the evidence and convicted the appellant/1st accused alone for the charged offences and sentenced him as stated above. There is no perversity in appreciation of the evidence by the trial Court. Therefore, there is no merit in the appeal and the appeal may be dismissed.

9. Heard the learned counsel for the appellant/1st accused and the learned Additional Public Prosecutor appearing for the respondent/Police and also perused the materials available on record.

10. In order to substantiate the charges framed against the accused persons, on the side of the prosecution, as many as 14 witnesses were examined and out of the 14 witnesses, the de-facto complainant was examined as P.W.2.

11. This Court being Appellate Court, as a final Court of fact

finding, has to necessarily re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court re-appreciated the entire evidence and gives its findings independently.

12. On a perusal of the evidence of P.W.2, it is clear that on 12.12.2005, when he had approached the 2nd accused for E.B. service connection, the 2nd accused had asked the de-facto complainant to approach the appellant/1st accused and as per his instructions, when the de-facto complainant approached the appellant/1st accused, he has demanded bribe from the de-facto complainant. Therefore, the prior demand made by the appellant/1st accused was proved by the prosecution. P.W.2 has further stated that, since he was not willing to give bribe, he approached the respondent police and as per the advise of the respondent/Police, he accepted to co-operate for the trap proceeding and subsequently, after pre-trap demonstration, he went to the office of the accused as per the the instructions given by the Trap Laying Team, along with the shadow witness/P.W.4 and on seeing P.W.2, the appellant/1st accused asked P.W.2 as to whether he has brought the money as demanded by him. When P.W.2

gave the money, the appellant /1st accused told him to come to tea shop where the appellant/1st accused received a sum of Rs.14,000/- (28 nos. of Rs.500/- notes) which were subjected to smearing with Phenolphthalein powder during pre-trap proceedings from the defacto complainant and thereafter, they went to the office of the accused. Subsequently, the defacto complainant came out and showed the pre-arranged signal to the Trap Laying Team and on seeing the same, the Trap Laying Team rushed inside the office of the accused and P.W.2 identified both the accused to them in the presence of P.W.4/ shadow witness. Thereafter, P.W.2 was asked to wait outside. Therefore, from the evidence of P.W.2/de-facto complainant, the subsequent demand and acceptance are also proved by the prosecution and the same was corroborated with the evidence of P.W.4/shadow witness.

13. The shadow witness/P.W.4 has also stated that on seeing the pre-arranged signal from the de-facto complainant, P.W.13/Trap Laying Officer approached the appellant/1st accused and enquired about the money which was obtained by him from the de-facto complainant and subsequently, the 1st accused, took the money from his pant pocket and handed over it to

P.W.13/Trap Laying Officer and when it was counted, there were only 27 nos. of Rs.500/- notes and only one note of Rs.500/- was found missing and when he questioned the same, the appellant/1st accused told that he gave the same to the 2nd accused. When the 2nd accused was enquired about the same, he told that the said Rs.500/- note along with his money of Rs.100/-, in total Rs.600/- was given to P.W.6 who was a contract labourer. In turn, P.W.6 was enquired and from him the said currency of Rs.500/- was recovered. Therefore, the evidence of P.W.4 proved the recovery of tainted money and the evidence of P.W.4 corroborates with the evidence of P.W.13/Trap Laying Officer and Ex.P.7/Seizure Mahazar.

14. The evidence of P.W.10, who was working as Inspector of Assessment in the office of the accused persons, clearly shows that the de-facto complainant had already paid the legal charges for getting E.B. service connection.

15. P.W.6 who was working as a contract labourer in the office of the

appellant, has deposed that on 20.12.2005, the Vigilance Police seized a sum of Rs.600/- from him which was given to him by the 2nd accused and subsequently, Rs.100/- was returned to him and Rs.500/- was seized by them.

16. The evidence of P.W.3/Scientific Assistant Grade-II and Ex.P.6/Chemical Analysis Report, clearly prove that the appellant/A1 had handled the currency mentioned in the entrustment mahazar/Ex.P.3.

17. Therefore, from the evidence of P.W.2 to P.W.4, P.W.6, P.W.10 and P.W.13 and Ex.P.3/Entrustment Mahazar, Ex.P.7/Seizure Mahazar and Exs.P.8 to P.10/receipts for payment made by the de-facto complainant, for getting EB service connection, the prosecution has proved the main ingredients of demand, acceptance and recovery of money.

18. One of the main grounds taken by the learned counsel for the appellant/1st accused is that the Trap Laying Officer/P.W.13 has not given opportunity to the appellant/1st accused to offer his explanation soon after recovery of the tainted money, which is a violation of the mandatory

provisions, namely Rule 47 of the Manual of the Directorate of Vigilance and Anti-Corruption. Vigilance Manual is only guideline for procedures to be followed by the Vigilance Department to enforce the proceedings during trap proceedings and it is not an Act and therefore, it cannot have any statutory force which can be enforced as per law. Therefore, mere procedural violation on the part of the investigation, may not defeat the substantial justice. In the cases of this nature, the Court cannot give much importance to the technicalities or procedural lapses. If the evidence of the prosecution witnesses inspires the confidence of the Court and and if it substantiates the charges framed against the accused and if the foundational facts of demand, acceptance and recovery of money are established by the prosecution beyond all reasonable doubts in the manner known to law, then there is a statutory presumption under Section 20 of the Prevention of Corruption Act showing that the money recovered from the accused is a bribe money. Unless the accused rebuts the presumption in the manner known to law, the Court can convict the accused based on the materials available.

19. In this case, the prosecution has proved the demand, acceptance

and recovery in the manner known to law beyond all reasonable doubts whereas, the appellant/1st accused has not rebutted the presumption in the manner known to law. This Court does not find any perversity in the appreciation of evidence by the trial Court and there is no merit in the appeal and the appeal is liable to be dismissed.

20. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant/A1 by the trial Court are confirmed. Since A1 is on bail, the trial Court is directed to secure his custody to undergo the remaining period of sentence, if any. The sentence undergone by A1 shall be set off under Section 428 of Cr.P.C.

07.02.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation: Yes/No

To

1. The Special Judge /Chief Judicial Magistrate, Tiruvallur.

2. Inspector of Police,
   Vigilance and Anti Corruption,
   Chennai City-I Detachment,
   Chennai.

3. The Public Prosecutor Officer, High Court, Madras.

4. The Section Officer, Criminal Section, High Court, Madras.

P.VELMURUGAN
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