



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.11.2023

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.370 of 2012

R.Ekambaram

Appellant

vs.

State rep. by
Inspector of Police,
ACB/CBI/Chennai.
(R.C.No.45/A/2005)

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 16.6.2012 in C.C.No.14 of 2006 passed by the Principal Special Judge for CBI Cases, Chennai.

For Appellant : Mr.C.K.M.Appaji

For respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases
assisted by Ms.Virundha

JUDGMENT

Challenging the judgment of conviction and sentence passed by the Principal Special Judge for CBI Cases, Chennai in C.C.No.14 of 2006, the present Criminal Appeal has been filed by the accused.



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2. The allegation against the appellant/accused, who was serving as Senior Refrigeration Mechanic, Office of the Assistant Garrison Engineer/Electrical and Maintenance, Garrison Engineer, Military Engineering Services, St.Thomas Mount, Chennai since 16.7.1987 and thereby a Public Servant, is that he had demanded a sum of Rs.1,00,000/- as bribe from one Sundaresa Rao, de facto complainant, Lance Havildar (Junior Engineer), Office of the Assistant Garrison Engineer/Electrical and Maintenance, Garrison Engineer, Military Engineering Services, St.Thomas Mount, Chennai alleging that it is for deleting the name of the de facto complainant from the list of officials against whom action was proposed to be taken by the CBI in a case under investigation, pretending that the appellant had acquaintance with CBI officials and obtained a sum of Rs.11,000/-.

3. Details of conviction and sentence imposed against the appellant/accused are as under:-

<i>Penal Provision</i>	<i>Sentence</i>
Section 7 of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.5000/- in default to pay the fine, to undergo simple imprisonment for a period of two months.



<i>Penal Provision</i>	<i>Sentence</i>
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	Two years rigorous imprisonment and a fine of Rs.10,000/- in default to pay the fine, to undergo simple imprisonment for a period of three months.
The sentences shall run concurrently.	

4. Factual aspects, which could be elicited from the materials available, are as under:-

i) The Inspector of Police, ACB, CBI, Chennai, PW5 claiming that the Superintendent of Police had called him to his Chambers on 20.9.2005 at about 4.30 pm, informed him about receipt of a telephonic call from the de facto complainant about the demand of bribe by the appellant/accused and directed him to meet the de facto complainant Sundaresa Rao, PW2 at his residence, receive a written complaint and verify the genuineness of the same.

ii) On such directions, PW5 arranged two witnesses, one from FCT, Sastri Bhavan and from Deputy Controller of Accounts, Sastri Bhavan and formed a team of officers from CBI and also got the assistance of C.Mohan Kumar, Assistant in FSL for CBI. Accordingly, Sri.Gunasekaran, Assistant from FCI and Sri.V.Ramasubramaniam,



Junior Accountant from Pay and Accounts Office, Sastri Bhavan reported before PW5 at about 6.15 PM.

iii) At about 7.05 pm PW5, along with other CBI officials and independent witnesses left CBI Office and reached the residence of PW2 at about 7.55 pm, whereupon, PW2 had handed over to PW5 a typewritten complaint, Ex.P2 dated 20.9.2005, in duplicate addressed to S.P. with regard to the demand of bribe by the appellant.

iv) PW5, claiming to have verified the complaint, Ex.P.2 through his source and found to be genuine, decided to lay a trap on the appellant and thereby forwarded the original complaint to the Superintendent of Police with a covering letter, Ex.P6 through a Police Constable by name V.Sripathy.

v) Subsequently, at 20.50 hours, PW5 explained the team members about the trap and handed over a copy of the complaint to make them understand the trap proceedings he sought to initiate.

vi) When PW5 enquired, it was informed by PW2 that he could generate only a sum of Rs.11,000/- though the demand was Rs.1,00,000/-. Then, PW5 had conducted a demonstration of trap before the trap team with the said amount of Rs.11,000/- and thereafter, after smearing phenolphthalein powder, divided such amount into two bundles and kept in a shoulder bag of PW2 to



pretend as if he possesses more money. Then PW5 had given instructions to PW2 not to handle such amount until a demand is made by the appellant.

vii) The team members were sitting in a room opposite to the kitchen of the residence from where the happenings outside can be seen through a glass window as there was enough light in the verandah and instructions were given to the complainant for seating arrangements of both PW2 and the appellant to enable the team members to watch the happening.

viii) PW4-Mohankumar, Scientific Assistant was given a Video camera with instruction to cover the incident and PW3 was instructed to witness the incident and thereafter, Entrustment Mahazar Proceeding Ex.P4 was drawn between 8.50 p.m. and 9.20 p.m. at the residence of PW2 and all the members of the trap team signed the Mahazar.

ix) At about 9.45 p.m. calling bell was rung and PW2 opened the door and thereupon the appellant had entered into the house of PW2 and he was offered a seat on the cot by PW2. PW4 started videographing the happenings in the veranda. The same could be seen by the trap team from the inner room, however, they could not hear the the talks that went between the appellant and the de facto



complainant. Subsequently, After about 8 to 10 minutes, PW2 got up from the cot and brought the shoulder bag and kept on the cot. Then, he took out one bundle of currency notes and extended to the appellant and the appellant had collected the same and kept it on the cot and extended his hand. PW2 took out another bundle of note and extended towards the appellant. The appellant had shown his hand directing PW2 to keep the bundle on the cot. The entire team was watching this through the glass window from the inner room where the lights were switched off. At this point of time, PW5, along with the independent witnesses and CBI officials, came out of the room through the other door and came near the cot where PW2 and the appellant were sitting.

x) PW5 introduced himself as CBI Inspector, introduced other persons to the appellant, enquired the appellant about his identity and about the demand of bribe money and thereafter, arrested the appellant for the demand of bribe from PW2.

xi) Thereafter, Sodium Carbonate solution was prepared and the right hand wash of the appellant was taken in the solution and the solution turned pink and the solution was preserved in a bottle which is marked as M.O.2. In the same way, another sodium carbonate solution was prepared tested for left hand and the solution



turned pink. It was kept in a bottle, M.O.3. Then PW5 directed the appellant to hand over the bribe amount to the independent witness and accordingly, the appellant took the 2 bundle of currency notes from the cot and handed over to the independent witnesses, which is marked as M.O.1 series, which was found tallying with the Serial Nos. entered in the Entrustment Mahazar, Ex.P4 and thereby, the currency notes were seized by PW5 for the purpose of investigation. The entire episode was being videographed and it was stopped after the hand wash of the appellant/accused was taken. Personal search of the appellant was conducted and he was found having his identity card, Driving licence and hand kerchief. Before conducting the search, the video cassette was packed and sealed, which is marked as M.O.2. Then, arrest memo was prepared and the information about the arrest of the appellant was sent to his wife Smt.Janaki through telephone.

xii) Subsequently, when PW5 enquired the de facto complainant about the happenings after the arrival of the appellant, he narrated and thereupon, the recovery proceedings, Ex.P3 was prepared in the residence of PW2, the de facto complainant and a copy of the same was furnished to the appellant on acknowledgement.

xiii) In the meanwhile, F.I.R., Ex.P7 was registered by Sri.



Sathyamurthy, Inspector of Police, PW8 at 9.45 pm on 20.9.2005, as per the direction of Superintendent of Police.

xiv) On concluding the recovery proceedings at 11 p.m., the trap team along with the appellant went to the CBI office where the appellant was handed over to PW8 the investigating officer Sathyanurthy, Inspector of Police for further action. On 23.9.2005, the case materials were handed over to PW8 along with C.D. for further action as per the direction of the Superintendent of Police.

xv) PW8, Inspector of Police, CBI, ACB/Chennai, who registered the FIR, Ex.P7, on receipt of Entrustment and Recovery Mahazar and other trap materials from PW5 on 23.9.2005, produced the same in the Trial Court, recorded the statements of PW5, Suresh Kumar, Inspector and C.S.Moni, Inspector.

xvi) On 8.11.2005, PW8 recorded the statements of Sri.Mohankumar (PW4), Sri.Ashok Kumar, Deputy Superintendent of Police, Sri.Roy Alexander, DSP. On 9.11.2005, he had collected the compact Disc, M.O.5.. from PW2 and recorded his statement. On the same day he recorded the statement of Sri.Ram Kumar, J.E.,(M.E.S) (PW6). On 10.11.2005 he had collected the attested extract of Service Book of the appellant from PW9, Smt.Jayanthi Asirvatham, Administrative Officer, Office of the Commander Works Engineer,



Chennai so as to prove the service particulars of the appellant and recorded her statement. On 16.11.2005, PW8 had examined and recorded the statement of Sri. T. Gunasekaran, Asst. Grade I, Zonal Vigilance Squad, FCI, Chennai (PW3). On the same day he had recorded the statement of Sri.V.Ramasubramaniam, Junior Accountant, Office of the DCA, Department of Commerce, Chennai. On 8.12.2005, PW8 had recorded the further statements of PW2 and PW6. On 19.12.05, he had collected the attested extracts of Attendance Registers for ASI and below, for Ministerial Staff and for Inspectors/S.Ls. of CBI, ACB, Chennai from PW10, Sri.P.Rammohan Rao, D.S.P., CBI and recorded his statement. On 30.1.2006, PW8 had received the certified copy of Chemical Examiner's Report through the court. On 1.2.2006, he received the sanction order for prosecution of the appellant, signed by PW1-Sri.B.H.Biradar, Commander Works Engineer, Chennai. On 15.2.2006, after completing the investigation, PW8 had filed the final report, against the appellant for the offence punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

xvii) The final report was taken on file in C.C.No.14 of 2006 by the Principal Special Judge for CBI Cases, Chennai. On summoning,



the Appellant/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial.

xviii) In order to bring home the charges against the accused, the prosecution had examined P.Ws.1 to 10 and marked Exs.P1 to P15 and produced Mos.1 to 5.

xix) On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had denied the same and contended that he never demanded and accepted any amount from the de facto complainant as contended by the prosecution and the case has been falsely foisted against him by the CBI. On the side of defence, neither any witness was examined nor any document was filed.

xx) The Trial Court, on considering the entire materials, found the appellant/accused guilty and imposed the punishments, as referred to above, which is under challenge in the present Criminal Appeal.

5. The crux of the submissions of Mr.C.K.M.Appaji, learned



counsel for the appellant is as under:-

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i) The Trial Court has erred in rendering the judgment of conviction and sentence against the appellant against the law, weight of evidence and probabilities of the case.

ii) The Trial Court has erred in believing the evidence of PW5 without analysing the same in proper perspective and ignoring that such evidence is against probability.

iii) The Trial Court has failed to appreciate that the appellant is a public spirited person and he has been victimized for his activism.

iv) The Trial Court has failed to appreciate that there is a feud between the uniformed officers and the civilian cadres of the Military Engineering Services and the present complaint is an outcome of such a vendetta, especially, when PW2, the de facto complainant himself is an accused facing charges and there is a strong motive for him to implicate the appellant in the present case as elicited by the defence in his cross-examination.

v) The Trial Court has miserably failed to appreciate that the act alleged to have been committed by the appellant is only a private one and not connected with any of his official duties so as to attract the provisions of the Prevention of Corruption Act.

vi) The Trial Court has miserably failed in ignoring the delay on



the part of the de facto complainant in lodging the complaint for the demand alleged to have been made 20 days prior to the date of complaint.

vii) The Trial Court erred in ignoring the fact that the de facto complainant himself had gone to the office of the appellant in the morning at 9.45 am on the day of trap.

viii) The conduct of PW5 in arranging the trap team even before verifying the genuineness of the complaint and even prior to registration of the case, shows that it was done with predetermination to fix the appellant in the foisted case.

ix) The Trial Court failed in ignoring the discrepancy pointed out by the defence with regard to phenolphthalein test to the effect that when the prosecution witnesses viz., PW2, PW5 and PW8 admit that the appellant had not handled the money with his left hand, but, the chemical analysis report states that his left hand wash had tested positively.

x) Taking into consideration the peculiar facts of the case, the non-preparation of the sketch of scene of occurrence as required under Chapter VIII of the CBI Crime Manual creates a doubt with regard to the case as projected by the prosecution.

xi) The non-examination of the Officer in the trap team one



Moni, who is the TLO in the case against PW2 and others creates a doubt in the case of the prosecution.

xii) The Trial Court erred in not drawing adverse inference against the prosecution for non-production of the alleged telephonic conversation between PW2 and the appellant and for non-certification of electronic records.

xiii) The Trial Court erred in presuming the demand even without the video and audio recordings being played in court de hors the certification under Section 65 of the Indian Evidence Act.

xiv) The Trial Court erred in ignoring the admission made by PW1, the sanctioning authority in his cross examination giving an inference that he had given the sanction order without application of his mind.

xv) The Trial Court erred in inferring that there could have been a demand made by the appellant on mere acceptance of the money and recovery of the same, without considering the genuine explanation given by the appellant/accused and rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988 and thereby, the judgment of conviction and sentence rendered by the Trial Court is liable to be set aside.



6. Heard Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases on the above submissions, who submitted that the prosecution has proved its case against the appellant with cogent evidence and the Trial Court has rendered the judgment of conviction and sentence only after analysing the entire incriminating materials against the appellant culled out from the evidence of prosecution witnesses. Sofar as non-preparation of sketch of the scene of occurrence as contemplated by the CBI Crime Manual is concerned, he would submit that it is not mandatory, but, only discretionary and thereby, the judgment of the Trial Court warrants no interference by this court and the Appeal is liable to be dismissed.

7. Having hearing the learned counsel appearing for the parties and materials available on record, this court is able to find some peculiar aspects in the case. The foremost one being the frisky and fiery action taken by PW5, the Trap Laying Officer in initiating a trap against the appellant at the residence of the de facto complainant itself, when he himself admits in his evidence that he had been instructed by his superior viz., the Superintendent of Police to meet PW2 at his residence, receive a written complaint from him and verify the genuineness of the complaint, especially, when such a direction



was given by the Superintendent of Police after receiving a phone call from PW2 about the demand alleged to have been made by the appellant.

8. It is worse to note that when such a direction came from the Superintendent of Police at about 4.30 pm on 20.9.2005, the trap was organized by PW5 immediately thereafter, entrustment mahazar was made ready between 8.50 pm and 9.20 pm at the residence of PW2 itself and the entire pre-trap proceedings also concluded before 9.45 pm, at which time, the appellant was alleged to have stepped into the house of PW2, PW5 claims to have forwarded the complaint in original, Ex.P2 to the Superintendent of Police in the meanwhile and the same was registered as FIR, Ex.P7 at 9.45 pm.

9. It is still worse to note that such a swift action has been initiated in response to a phone call on the particular date, when the demand was alleged to have been made for the first time about twenty days prior to the date of complaint even as per the complaint Ex.P2 itself. Such a delay has been neither explained by the prosecution nor taken into consideration by the Trial Court.



10. Such a conduct of the Trap Laying Officer in organising a trap and taking the witnesses alongwith him, even prior to registration of a case and without verification of the genuineness of the case makes it clear that the Trap Laying Officer was predetermined to fix the appellant and implicate him in the case.

11. A careful analysis of the evidence of PW2, especially, his cross examination reveals that the appellant and the de facto complainant are colleagues and the appellant had been lodging complaints against some of his superiors pointing out some irregularities and thereby developed friction with some of his colleagues and thereby, the probability of his victimization cannot be simply brushed aside in the event of non-corroboration of prosecution witnesses. Such a probability is strengthened by the admission of PW2 in his cross examination that he had met the appellant in his house in the morning of the date of trap and the safe denial of the Trap Laying Officer, PW5, during his cross examination to the suggestions he was confronted with regard to the investigation of previous cases.

12. Sofar as the genuineness of the trap is concerned, the



learned counsel for the appellant submitted that the sketch of the scene of occurrence, which assumes a great significance, has not been prepared by the prosecution in the present case as contemplated by the CBI Crime Manual, thereby creating a doubt with regard to the genuineness of the trap when, especially, the trap having been laid at the house of the complainant and the electronic evidence produced by the prosecution has utterly failed to pass the muster to prove the case.

13. In this regard, Chapter 8 General Instructions 9/217 of the CBI Crime Manual is extracted hereunder for ready reference:-

"Plan of the scene

*9/217 - **In all important cases** the plan of the scene of offence **shall be drawn** by the investigating Officer or got prepared by him through any other suitable agency such as the Engineers of the CPWD or Railways, Patwaris etc. The I.O. may take the help of Technical Division of the CBI, if considered necessary.*

In trap cases a sketch of the scene of occurrence shall invariably be prepared."



14. It is not in dispute that following all the Rules and guidelines under the CBI Crime Manual may not be mandatory in nature as pointed out by the learned Special Public Prosecutor, however, the above Rule makes it clear that in all important cases the plan of the scene of offence shall be drawn by the investigating Officer and especially, in trap cases, a sketch of the scene of occurrence shall invariably be prepared.

15. In case on hand, this court is able to find several loopholes in the case of the prosecution, viz., the trap team had assembled alongwith the requisite gadgets like video cameras and recording devices and cassette at the house of the complainant even before registering case, received the complaint at the house of the complainant, prepared entrustment mahazar and got the FIR registered in the meanwhile and the trap team took hiding positions inside the house of the complainant and waiting for the accused to come to the house and only thereafter, as per the prosecution, the complainant is said to have handed over money to the accused. Especially, it is the version of the prosecution that the trap team could not hear the conversation that took place between the appellant and the de facto complainant. In such circumstances, this court,



without any other option, has to infer deliberation on the part of the Trap Laying Officer in not preparing the sketch of the scene of occurrence and it is certainly a dent in the case of the prosecution.

16. Further, there is a contradiction in the recovery mahazar, Ex.P3 with regard to recovery of Material Objects viz., left hand wash of the accused under M.O.3. PW3, the official witness, PW5, the Trap Laying Officer and PW8, the investigating officer, clearly admit the same during their cross examination. PW3 specifically admits that no member of the trap team washed the left hand of the accused. However, it is seen that Ex.P3 specifies about recovery of two bottles marked "A" and "B". Further, the left hand wash of the accused has been marked as M.O.3 and such a contradiction is certainly a dent to the case of the prosecution.

17. Another peculiar aspect relevant to be noted is that an Officer by name C.S.Moni had also taken part in the trap team of the present case, who happened to be the TLO in a previous case lodged against PW2 himself, as elicited by the defence by cross examining PW5, TLO in the present case and PW8, investigating officer, however, such a crucial witness has not be made to enter into the



witness box and the suggestions put by the defence to PW5 and PW8 were simply and safely denied by them.

18. To crown it all, the electronic evidence, viz., the conversation alleged to have taken place between the appellant and the de facto complainant and recorded by the de facto complainant as contended in his written complaint, Ex.P2 itself and the videograph alleged to have been taken during the trap procedure and marked as M.O.4 were not at all claimed to have been played neither during the investigation nor in the open court. However, the Trial Court had not taken any adverse inference against the prosecution and rather presumed the demand even without the video and audio recordings being played in court, de hors the certification under Section 65-B of the Indian Evidence Act.

19. To sum up, this court is of the view that the prosecution has miserably failed to prove its case with regard to demand and acceptance, which being *sine qua non* for a trap case whereas the defence has proved its case by preponderance of probabilities and it outweighs the cogency of the case of the prosecution.



WEB COPY 20. In **N.Vijayakumar vs. State of Tamil Nadu** (2021) 3 SCC

687, the Hon'ble Apex Court has held as under:-

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that



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even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved."

21. In view of the above, this court finds that the Trial Court, without considering the above aspects and rebuttal of presumption under Section of the Prevention of Corruption Act made by the appellant with probable and plausible explanation, had hastily concluded and convicted the appellant and it is liable to be set aside.

22. Accordingly, the Criminal Appeal stands allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount paid, if any, shall be refunded to him.

21.11.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Principal Special Judge for CBI Cases,
Chennai.



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2. Inspector of Police,
ACB/CBI/Chennai.
3. Special Public Prosecutor
for CBI Cases,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

Criminal Appeal No.370 of 2012

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