IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.544 of 2012

N.Narayanasamy ... Appellant

Vs.

The State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore. ... Respondent

Prayer:

Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records relating to the judgment dated 13.08.2012 made in Spl.C.C.No.31 of 2011 on the file of the Special Judge, Special Court for under the prevention of Corruption Act, Coimbatore convicting the appellant under Section 7 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 and imposing the sentence of 2 years Rigorous Imprisonment and fine amount of Rs.1,000/- on default of payment of fine amount one month Rigorous Imprisonment and 3 years Rigorous Imprisonment and fine amount of Rs.2,000/- in default of payment of fine amount, two months Rigorous Imprisonment, under Section 248(2) of the Code of Criminal Procedure respectively and set aside the same.

For Appellant : Mr.B.Kumar, Senior Advocate
for Mr.S.Ramachandran
For Respondent : M/s.G.V.Kasthuri
Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal is filed against the judgment dated 13.08.2012 passed in Spl.C.C.No.31 of 2011 on the file of the Special Judge, Special Court for the Prevention of Corruption Act, Coimbatore.

2. The respondent police registered the case in Crime No.2/2007 AC/CB, against the accused for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act. The respondent police after investigation, laid a charge sheet before the learned Chief Judicial Magistrate, Coimbatore and the learned Chief Judicial Magistrate has taken the case on file in Special C.C.No.2 of 2008. Subsequently, the case was transferred to the file of the learned Special Judge, Special Court for Prevention of Corruption Act, Coimbatore and re-numbered as Special Calendar Case No.31 of 2011. The learned Special Judge after completing the formalities, framed the charges against the accused/appellant for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act. After trial, the trial judge

found the appellant guilty and convicted the appellant for the offence under Section 7 of Prevention of Corruption Act, 1988 and sentenced him to undergo Rigorous Imprisonment for two years and to pay fine amount of Rs.1,000/-, and in default of payment of fine amount, to undergo rigorous imprisonment for one month and also convicted for an offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 and sentenced to undergo rigorous imprisonment for three years and to pay fine amount of Rs.2,000/- in default of payment of fine amount, to undergo rigorous imprisonment for two months. Challenging the said judgment of conviction and sentence, the accused has filed the present Criminal Appeal before this Court.

3. Specific case of the prosecution is that on 11.01.2007 when the defacto-complainant approached the appellant in his office to get three phase electric connection for his house, the appellant demanded Rs.10,000/- for himself and Rs.5,000/- for others to process his application. On the day itself, the appellant had reduced the quantum of bribe to the tune of Rs.7,000/- after negotiation. Again on 22.01.2007, the appellant contacted the defacto complainant over cell phone, reiterated his demand. Again on 23.01.2007 at

his office, appellant directed the defacto-complaint to pay half of the amount ie.,Rs.3,500/- on 24.01.2007 and remaining half of the amount at the time of providing service connection. Since the defacto-complainant did not want to give bribe amount to the appellant, he filed a complaint to the respondent.

4. In order to substantiate the case of the prosecution, on the side of the prosecution before the trial court, as many as 12 witnesses were examined as P.Ws.1 to 12 and 17 documents were marked as Exs.P1 to P17. Besides, seven materials were also exhibited as M.O.No.1 to M.O.No.7.

5. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused by questioning under section 313 Crpc., with reference to the incriminating circumstances appears on the side of the prosecution witnesses and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral evidence was let in. However, three documents were marked as Exs.D1 to D3.

6. On completion of trial, hearing the arguments advanced on either side, considering the materials, the trial court convicted the appellant for the charged offences and imposed the sentence as stated above. Aggrieved over the same, the accused is before this Court by way of this Criminal Appeal.

7. Mr.B.Kumar, learned Senior Counsel appearing for the appellant submitted that soon after the trap proceedings, the prosecution should have obtained explanation from the accused, whereas in this case, there is no such explanation has been offered from the appellant. Though two independent witnesses were very much available at the time of trap proceedings, they have not been examined by the prosecution. The amount given by the defacto-complainant to the appellant is the amount for official expense ie., for caution deposit and other incidental expenses. In this case, trap was conducted in between 1740 hours to 1750 hours. ie., in between 5.40 pm to 5.50 pm. Even according to the prosecution, the appellant directed the defacto-complainant to come to the office in the morning. But he did not go to the office in the morning. If at all, the defacto complainant went to the office in the morning, the appellant would have asked the defacto-complainant to deposit the caution

deposit and other incidental expenses. Since he went to the office at 5.30 pm, that also after office hours, the appellant could not pay the amount in the official account and hence he thought of paying the amount in the next day morning in the official account. Further, it is a well plan and in order to take vengeance against the appellant, the defacto complainant filed a false complaint before the respondent police. In order to succeed in the trap proceedings, the respondent police conducted the trap proceedings after 5'o clock and that also after office hours. Further he would submit that there was no previous complaint registered as against the appellant and the appellant/accused never receiving any bribe from any of the customer/consumer at any time. It is stated by the prosecution that the appellant demanded money from the defacto complainant over cellphone, but neither cellphone of the appellant nor the cellphone of the defacto complainant were seized by the prosecution and also did not collect call details. Hence, the non-recovery of cellphone and the non-production of call details are fatal to the case of the prosecution. There was a civil dispute between the defacto complainant and the sister of the appellant and in order to give trouble to the family members of the appellant, the defacto complainant foisted a false case against the appellant. Though independent witnesses were present at the time of occurrence, they have not been cited as witness and examined before the Court. P.W.5, who is the foreman has clearly stated in his evidence that there is a prevailing practice in his Department that the officer will collect the money from the consumer/customer with regard to the payment of caution deposit and incidental expenses. In this case, the prosecution has not proved that the money given by the defacto-complainant is the bribe amount. The prosecution has not proved the demand and acceptance of money. In the absence of prior demand of bribe amount and acceptance of the same, the appellant cannot be convicted. The official witness who accommodated the team has not got any permission from their higher officials in the manner known to law. There was no corresponding entries in the register to show all the documents are bilaterally prepared and signed. Prosecution failed to proved its case beyond all reasonable doubt and benefit of doubt may be extended in favour of the accused. The trial court failed to appreciate the evidence and erroneously convicted the appellant which warrants interference.

8. Learned Additional Public Prosecutor has submitted that when the defacto-complainant approached the appellant to get electricity three phase connection to his tailoring shop, the appellant demanded sum of Rs.10,000/- for himself and Rs.5,000/- for others for the purpose of providing three phase electricity connection. Further the appellant had reduced the quantum of bribe to the tune of Rs.7,000/- after negotiation. When the defacto complainant could not pay the said amount in time, the appellant voluntarily asked defacto-complainant as to whether he has arranged money or not. When the defacto-complainant expressed his difficulty in arranging the money, the appellant asked him to pay half of the demanded amount of Rs.7,000/- ie., Rs.3,500/- at the initial stage and the balance amount of Rs.3,500/- at the time of effecting service connection. Since the defacto-complainant was not willing to fulfill the demand made by the appellant, he lodged a complaint before the respondent police. In view of the same, the respondent police demonstrated the pre-trap proceedings on 24.01.2007. On the date of execution of trap proceedings, when the defacto-complainant enquired about the presence of the appellant, he informed that he has gone to Coimbatore and he will come in the evening and directed the defacto-complainant to come to the office in the evening. Trap

laying officers team was waiting outside the premises. When the defacto complainant approached the appellant and the appellant asked him as to whether he arranged money. When the defacto complainant has given the money, the appellant received the money and kept in his pant pocket. After receiving the pre-arranged signal from the defacto-complainant, trap laying team went to the office of the appellant and caught hold the appellant and conducted phenolphthalein test which resulted positive. In order to substantiate the case, on the side of the prosecution, 12 witnesses were examined. Out of which, P.W.2 is the defacto-complainant. P.W.5 who is also the employee of TNEB, has clearly stated in his evidence that the defacto complainant made an application for electricity connection. He only asked the defacto-complainant to approach the appellant. Prosecution proved that the defacto-complainant made an application to get electricity connection. The appellant is the concerned officer has to take steps to effect service connection. From the evidence of P.W.2-defacto complainant, P.W.3-shadow witness and P.W.5-foreman of TNEB, the prosecution has proved its case beyond all reasonable doubt.

9. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

10 . It is an admitted fact that the appellant was working in Electricity Board, South Pollikalipalayam, Thirupur. It is not in dispute that the defacto complainant made an application before the appellant's office for getting electricity service connection to his tailoring shop. The defacto-complainant was examined as P.W.2 and he has clearly narrated the entire incident. P.W.3 is the shadow witness, who accommodated defacto-complainant-P.W.2 at the time of trap proceedings. He corroborated the evidence of P.W.2. P.W.2 has clearly stated in his evidence that he applied for the electricity service connection for which he approached the appellant. On 11.01.2007, the appellant demanded Rs.10,000/- for him and Rs.5,000/- for other staff members of his office and he informed the complainant to deposit other incidental charges and caution deposit, apart from the demanded amount. Further, he has stated that if the complainant failed to pay the amount, service connection will not be effected. P.W.2 made a request to reduce the amount. The appellant replied that he has to meet out all the expenses and he has to satisfy the other

related officials and staff and demanded a sum of Rs.7,000/- on his part. Subsequently, he has approached P.W.6 who has given a chit to make the deposit of Rs.3,500/- and instructed the defacto complainant to make payment before the Chettipalai Office and the said amount was paid by the defacto complainant and receipt has also been received by him. Thereafter, P.W.6 asked the defacto-complainant to approach the appellant. When he approached the appellant, he demanded sum of Rs.7,000/- and stated that only if he paid the amount of Rs.7,000/-, he will initiate steps to give service connection. Thereafter, the appellant called the defacto-complainant over cellphone and asked him as to whether he had made arrangement of money demanded by him and also instructed the complainant to meet him in his office. The defacto complainant did not want to give any bribe to any public servant. Hence, he made a complaint before P.W10. The respondent police made pre-trap proceedings on 24.01.2007. P.W.10 with his team went to the office of the appellant and awaiting for the arrival of the accused. When the defacto complainant went to the office of the appellant, the appellant demanded money and the defacto complainant also gave the money. The appellant accepted the same and kept in his pant pocket. After receiving the pre-arranged signal from the defacto-complainant, P.W.10 with his team went to the office and caught hold of the accused and completed formalities and took samples and sent the same to Forensic Laboratory. P.W.3 is the shadow witness who also accompanied them. He also corroborated the evidence of P.W.2 regarding the demand and acceptance of money at the time of trap proceeding. Though learned counsel for the appellant vehemently contended that neither cell phones were seized, nor call details were collected by the prosecution and when the specific question was asked before the Investigating Officer, he has clearly stated that at the relevant point of time, they were not aware about the collection of call details. After 2015 only, advanced technology has been introduced in their field. Therefore, mere non-production of cell phone and collection of call details, may not be sole ground to reject the case of the prosecution. The contention of the learned counsel for the appellant is that in order to succeed over the trap, the respondent purposely gathered at the office of the appellant after 5 '0 clock. It is not the case of the appellant that he received money for caution deposit or any other incidental official charges. It is the case of the prosecution that when the defacto complainant applied for service connection, the appellant demanded money, which is illegal gratification other than legal remuneration. Since the defacto complainant did not want to give bribe, he approached the appropriate authority to take action against the appellant and naturally, the respondent police planned for trap proceeding and there is nothing wrong in it. Therefore, contention of the learned counsel for the appellant is not accepted. Though learned Senior Counsel for the appellant has submitted that during evidence, P.W.5 who was working as foreman, has stated that there is a usual practice of collecting money for caution deposit and incidental charges from the customer before sanctioning of electricity connection in their office, such practice cannot be recognized as per law. But in this case, as per evidence of P.W.6, it is found that the defacto-complainant has already paid caution deposit and other incidental charges and he had received the same and only after payment of caution deposit, he had approached the appellant. After receiving the receipt only, the appellant demanded sum of Rs.7,000/- which is illegal gratification other than legal remuneration. Since the complainant did not want to give bribe, he approached the respondent to take appropriate action. Hence they demonstrated the pre-trap proceedings. Evidence of P.W.2 proved the initial demand made by the appellant. Evidence of P.W.3 also proved the pre-trap proceedings and the acceptance of bribe amount by the appellant. From the evidence of P.W.6, it is found that the defacto complainant applied for electricity service connection and his payment of caution deposit and other incidental charges. Evidence of P.W.3, P.W.10, Ex.P5-Mahazar, expert opinion and Phenolphthalein test report clearly proved the recovery of money. Appellant has also not denied the acceptance and recovery of money. Therefore, under these circumstances, the trial court rightly appreciated all the witnesses and convicted the appellant and sentenced him as stated above. In this case, the prosecution has proved the basic ingredients of demand, acceptance and recovery. Therefore, the presumption under Section 20 of the Prevention of Corruption Act would favour to the prosecution. It is for the appellant to rebut the presumption.

11. Though the learned counsel for the appellant in support of his contentions placed reliance upon the judgment of the Hon'ble Supreme Court rendered in *Tomaso Bruno and another Vs. State of Uttar Pradesh* reported *in 2015 (7) SSC 178,* the judgement relied upon by the learned counsel for the appellant is not applicable to the present case on hand. In this case, the

prosecution has proved its case beyond reasonable doubt and the appellant has not rebutted the presumption in the manner known to law.

12. The appellate court is the final court of fact finding, it has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, the prosecution has proved its case beyond all reasonable doubt. This Court does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed. Judgement of conviction and sentence passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition, if any, is closed. Since the appellant is on bail, the trial court is directed to secure the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set of under Section 428 Cr.P.C.,

31.01.2023

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Index:yes/No
Internet:yes/No

P.VELMURUGAN, J.

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To

1. The Special Judge, Special Court for under the prevention of Corruption Act, Coimbatore

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

3. The Public Prosecutor,
   High Court, Madras.

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