



Crl.A.No.226 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.226 of 2015

The State represented by
The Public Prosecutor,
High Court, Madras – 600 104.
(V & A.C. Salem
Crime No.06/AC/2001)

... Appellant

vs.

N.Ismail Sheriff

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment of acquittal passed in Spl.C.C.No.9 of 2014 dated 25.07.2014 by the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.

For Appellant : Mrs.G.V.Kasthuri,
Additional Public Prosecutor

For Respondent : Mr.D.Shivakumaran



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JUDGMENT

Aggrieved over the judgment of acquittal passed by the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem, in Spl.C.C.No.9 of 2014 dated 25.07.2014.

2 Originally, the appellant/Police has registered a case against the respondent in Crime No.6/AC/2001 for the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After investigation, they laid a charge sheet against the respondent before the learned Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act for the above said offences. The learned Special Judge, had taken cognizance of the charge sheet in Spl.C.C.No.9 of 2014 and after completing formalities framed the charges against the respondent.



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3 In order to substantiate the charges, on the side of the prosecution, as many as 26 witnesses were examined as P.Ws.1 to 26 and marked 25 documents as Exs.P1 to 25, besides 7 material objects were exhibited as M.Os.1 to 7. On completion of examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in and two documents were marked as Exs.D1 and D2.

4 After completing trial and hearing of arguments advanced on either side, the learned Special Judge found that the prosecution has not proved its case beyond all reasonable doubts and extended benefit of doubts in favour of the accused and thereby acquitted him. Challenging the said judgment of acquittal passed by the learned Special Judge, the State has filed this appeal.



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5 Specific case of the prosecution is that the defacto complainant on 30.10.2001 approached the accused, who was working as Special Revenue Inspector at the Office of the Special Tahsildar, Adi Dravidar Welfare, Salem, requesting to issue free house site pattas to the landless poor villagers of Sivathapuram village, for which the accused demanded Rs.1000/- for each patta totally Rs.20,000/-. When the defacto complainant/P.W.2 informed the demand of the accused to the beneficiaries, they requested P.W.2 to bargain with the accused to reduce the amount. P.W.2 after a week on 05.11.2001 met the accused and equired, for which, the accused reduced his demand to Rs.500/- for each patta totally Rs.10,000/- for twenty house site patts. Thereafter two beneficiaries namely P.W.4 and P.W.7 paid their amount of Rs.500/- each and since the defacto complainant was not willing to pay the same to the accused, approached P.W.25, the Inspector of Police, Vigilance and Anti Corruption, Salem, and made oral complaint against the respondent/accused. Hence the present case.



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6 Mrs.G.V.Kasthuri, learned Additional Public Prosecutor appearing for the appellant/State would submit that the defacto complainant is a resident of Sivathapuram Village, Salem District and he made arrangements for issuing free house site pattas for the landless poor villagers of Sivathapuram Village. He approached the then sitting MLA of Verrapandi constituency, who made recommendation of the list Ex.P5 prepared by the defacto complainant. The list was received by P.W.23 the then Special Tahsildar (ADW), Salem, from P.W.2 and he directed P.W.2 to approach the accused for further proceedings. Accordingly, P.W.2 on 30.10.2001 approached the respondent/accused for arranging free house site pattas for the landless villagers, for which, the respondent demanded Rs.1000/- each totally Rs.20,000/- for twenty pattas and when P.W.2 informed the same to the beneficiaries and they expressed their inability to pay the said amount. Thereafter on 05.11.2001, P.W.2 met the respondent and informed the inability expressed by the beneficiaries and thereafter the accused reduced the demand to Rs.500/- each totally Rs.10,000/- and told unless they pay the money, he will not forward the



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eligibility criteria of the beneficiaries. Only two persons paid money and remaining beneficiaries sought time to arrange the said amount of Rs.500/- and since P.W.2 was not willing to pay the amount of Rs.1000/- paid by the two beneficiaries, he approached P.W.25 the Inspector of Police, Vigilance and Anti Corruption, Salem, and made oral complaint and P.W.25 reduced the same into writing, which was marked as Ex.P2. Since P.W.2 is willing to co-operate for trap proceedings, P.W.25 made arrangements for trap proceedings.

7 After completing pre-trap proceedings, P.W.25 along with P.W.2, P.W.3 and other trap raiding officers went to the office of the Special Tahsildar, where the accused was working. P.W.2 went to the accused, who was standing along with two persons and when the accused noticed arrival of P.W.2, the two persons moved away and the accused asked P.W.2 about his demand. At that time P.W.2 gave M.O.1 series currency notes, which were coated by Phenolphthalein and sodium carbonate powder to the accused. Thereafter P.W. 2 showed pre-planned signal and noting the same immediately P.W.25, P.W.3 and other trap raiding officers came to them and caught hold the respondent/accused.



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Money was recovered and Phenolphthalein test was conducted, which showed positive and hence the respondent/accused was arrested.

8 In order to substantiate the charges, prosecution examined 26 witnesses out of which the sanctioning authority was examined as P.W.1 and the defacto complainant was examined as P.W.2 who has clearly spoken about the entire episode and prior demand and acceptance of bribe by the respondent/accused and recovery of bribe money. P.W.3, who is a shadow witness has clearly spoken about the pre-trap demonstration proceedings and the trap proceedings on the date of occurrence.

9 P.W.4, who is one of the beneficiaries has clearly deposed that he approached P.W.2 for making arrangements to get free house site patta and P.W.2 after enquiring with the respondent/accused told him that the respondent demanded Rs.1000/- per person, for which he and the other beneficiaries expressed their inability and after bargaining, the accused reduced his demand to Rs.500/- per person and P.W.4 paid the amount and others sought time till Diwali.



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10 From the evidence of P.Ws.2 and 3 demand of bribe, acceptance and recovery were proved. The respondent took a defence of plea of *alibi* that on all the three dates mentioned by P.W.2 alleging that the respondent demanded bribe and after bargaining reduced the same, the respondent/accused was not available in the Office and he went to Chennai to meet the Public Prosecutor with regard to the Writ Pending before this Court. To prove the same, the accused marked two documents viz. Exs.D1 and D2, which are the TA/DA bills. But, prosecution has marked Ex.P9 Attendance Register, wherein on the dates mentioned by P.W.2 it was shown that the respondent was on “Camp”. As per the evidence of P.W.23 the jurisdictional Tahsildar, the Camp may be conducted within the local area and some times the Camp may be conducted in the office premises itself. Therefore it cannot be concluded that the accused on the specific dates was not available and went to Chennai. Therefore Exs.D1 and D2 may be created by the respondent/accused for the purpose of this case.



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11 Therefore basic ingredients of Section 7 of Prevention of Corruption Act, 1988, i.e demand of bribe, acceptance and recovery were proved from the evidence of P.Ws.2 and 3. Further it is also proved that on 30.10.2001, 05.11.2001 and 08.11.2001 the accused was available in the office and he received the money from P.W.2 as gratification other than legal remuneration to arrange free house site pattas for the villagers. Prosecution has proved its case beyond all reasonable doubts through oral and documentary evidence, but, unfortunately the trial Court failed to appreciate the evidence of the prosecution witnesses in the right perspective and erroneously came to the conclusion that prosecution has not proved its case and extended the benefits of doubt towards the accused and hence the finding of the trial Court is perverse and the judgment of acquittal passed by the trial Court warrants serious interference of this Court.



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12 Per contra, the learned counsel appearing for the respondent/accused would submit that the learned trial Judge has rightly and carefully analysed the evidence of prosecution witnesses and heard the arguments of both sides and acquitted the respondent/ accused from all the offences charged against him.

13 He would further submit that the defacto complainant is not a direct beneficiary and he has not applied for any patta for himself and hence he has no *locus standi* to file complaint against the respondent/accused. Even though P.W.2 has stated that some of the beneficiaries have accompanied with him while approaching the accused, but prosecution has failed to prove the prior demand made by the accused by examining any other beneficiaries.

14 The learned counsel appearing for the respondent/accused further submitted that in order to wreck vengeance with regard to the money transaction between them, the defacto complainant has filed the



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false case and trap raiding officers have also not followed the procedures and the prosecution has not proved its case beyond all reasonable doubts. Even though it is alleged that the respondent on 30.10.2001, when P.W.2 approached him for making arrangements for issuing free house site pattas to landless villagers, demanded bribe of Rs.20,000/-, the respondent was not available in the office on the above said dates and in fact he went to Chennai to meet Public Prosecutor with regard to the writ petition pending before this Court. To prove his defence the respondent also marked Exs.D1 and D2 TA/DA Bills.

15 P.W.4, who is one of the beneficiaries has deposed that he gave Rs.500/- to P.W.2 on Diwali, in the year of 2001, which fell on 14.11.2001, whereas P.W.2 said to have paid the money on 08.11.2001 i.e. prior to Diwali, which is impossible for P.W.2. Hence the above discrepancy creates doubt as to whether P.W.4 paid any amount to P.W.2 to pay the same to the accused as bribe.

16 The learned counsel would further contend that soon after recovery of money, when the P.W.25 questioned about the money, the



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respondent spontaneously replied that there was money transaction between him and P.W.2 and P.W.2 has repaid the due, from which it is clear that the amount received by the respondent on the date of alleged occurrence was not bribe and it is the due to be paid by P.W.2 to the respondent. Prosecution has failed to prove the prior demand, acceptance and recovery in the manner known to law. In support of his contentions, the learned counsel has placed reliance on the following decisions of this Court as well as the Hon'ble Supreme Court.

1. 2021 (2) SCC (Crl) 515 (N.Vijakumar vs. State of Tamilnadu)
2. (2006)1 SCC 401 (T.Subramanian vs. State of Tamilnadu)
3. 2018(0) Supreme (Md) 2022 (P.Natarajan vs. K.Parmalachelvan)
4. 2018 (4) MLJ (Crl) 315 The Inspector of Police, V & AC vs. P.Perumal)
5. 2017 3 MLJ (Crl) 529 (M.A.Palanisamy vs. T.S.Sivakumar & others)
6. 2018 2 MLJ (Crl) 118 (DSP, V & AC vs. S.Bose & another)



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17 Quoting the above judgments, the learned counsel argued that prosecution has to prove the basic ingredients of Section 7 of Prevention of Corruption Act, beyond all reasonable doubts and the accused voluntarily accepted the money knowing it to be bribe and in the absence of the same, recording conviction against the accused for the offence under Section 7 of Prevention of Corruption Act is unsafe.

18 Further, while interfering with the judgment of acquittal, the appellate Court must satisfy that there is compelled circumstances warranting such interference. In this case no such circumstances warrants interference of this Court, since the trial Court has rightly appreciated the oral and documentary evidence adduced by the prosecution witnesses and rightly acquitted the respondent and hence, there is no merit in the appeal and the same is liable to be dismissed.



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19 Heard the learned Additional Public Prosecutor appearing for the appellant/State, the learned counsel appearing for the respondent and perused the materials available on record and also carefully perused the judgment of the trial Court.

20 Since this Court, being an appellate Court, as a final Court of fact finding in this case and it has to independently re-appreciate the entire evidence and give independent finding. Accordingly, this Court also thoroughly gone into the entire materials and re-appreciated the entire evidence on record.

21 Since it is a case based on the trap proceedings, the Court has to see as to whether prior demand, acceptance of bribe and recovery are proved by the prosecution beyond all reasonable doubts. It is settled proposition of law that in an appeal against acquittal, normally the appellate Court will not interfere, unless, the Court finds perversity in appreciation of evidence by the trial Court and compelled circumstances



warranting interference with the judgment of the trial Court.

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22 P.W.2, who is a defacto complainant has clearly deposed about the official position of the respondent and purpose for which he approached him and regarding initial demand and subsequent reduction of earlier demand. The respondent has not denied that he was not a public servant and the scheme of issuing free patta to landless poor. The only defence taken by the respondent/accused is that plea of *alibi*. In order to prove the same, the respondent marked two documents Exs.D1 and D2, which are the TA/DA bills claimed by him. Per contra, to disprove the same, prosecution has marked attendance Register of the respondent's office for the year 2001 as Ex.P9, in which it is mentioned that the respondent/accused was 'on camp' on the alleged dates and it was not stated that he went to Chennai. Further, the place of Camp also within the revenue division of the office itself which is very nearer to the office also. Even some times, Camp will be conducted in the office premises itself. P.W.23 the jurisdictional Tahsildar has clearly stated that the respondent has not gone to Chennai on the specific dates. The above



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facts are all clearly proves that Exs.D1 and D2 would have been prepared by the respondent/accused for the purpose of this case.

23 It is to be noted that when the respondent/accused has taken a specific defence that on the specific dates he was not in the office and he went to Chennai to meet the Government Pleader, Madras High Court, with regard to the pending writ petition, it is for him to mark any document like travel ticket or to examine any one either in Chennai or in the Government Pleader's Office, whom he met on the specific dates. Therefore the respondent/accused has not proved the defence of plea of *alibi* in the manner known to law. Prosecution has proved its case beyond all reasonable doubts.

24 It is settled proposition of law that the accused need not prove his innocence by let any direct evidence, but, when he took a specific defence of plea of *alibi*, he has to prove that he was not in the occurrence place on the alleged dates. But, on the contrary, in this case, the prosecution, from the oral and documentary evidence adduced, has



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proved that the respondent was very much available in the proximate place within the revenue division of the Tahsildar office and since he was in camp, it cannot be said that the defacto complainant would not have met the respondent/accused. Therefore Exs.D1 and D2 are not helpful to the respondent/accused to prove his defence of plea of *alibi*.

25 There is no quarrel with the decisions of this Court as well as the Hon'ble Supreme Court referred to by the learned counsel appearing for the respondent/accused. In this case, prosecution has proved the prior demand in the manner known to law. Even though, during cross examination of P.W.2, the defence has put a suggestion that there was money transaction between the respondent/accused and P.W.2, the same was denied by P.W.2 and the defence could not extract anything favourable to the accused. It is settled proposition of law that once prior demand, acceptance and recovery of money are proved, there is presumption under Section 20 of the Prevention of Corruption Act and the accused has to rebut the same 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 the



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Prevention of Corruption Act. The contradictions pointed out by the learned counsel are not material contradictions and the same would not affect the case of the prosecution. Therefore, mere technicalities should not be allowed to stand in the way of administration of justice.

26 The trial Court has not appreciated the evidence produced by the prosecution and failed to find out the fact that the accused has not proved his defence of plea of *alibi* and it is well settled proposition of law that a person who pleads *alibi* has to establish the same. The trial Court cannot take advantage of the defect in investigation to extend benefit of doubt to the accused. This Court from the oral and documentary evidence produced by the prosecution finds that the prosecution has proved its case beyond reasonable doubt and there is no other view possible in this case. Therefore this Court finds that there is compelled circumstances to interfere with the findings of the trial Court.

27 Accordingly, this Criminal Appeal is allowed. The judgment of acquittal passed in Spl.C.C.No.9 of 2014 dated 25.07.2014 by the



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learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem, is hereby set aside.

28 Since it is a reversal judgment and it is necessary to direct the respondent / accused to appear before this Court for asking question of sentence to be imposed against him. Accordingly, the respondent/accused is directed to appear before this Court on **15.02.2022.**

06.02.2023

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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To

- 1.The Special Judge,
Special Court for Trial of Cases under the
Prevention of Corruption Act, Salem.
- 2.The Public Prosecutor, High Court, Madras.



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P.VELMURUGAN, J.

Since the appeal is arising against the judgment of acquittal, this Court as an Appellate Court after re-appreciating the entire materials and hearing the arguments of both sides reversed the judgment of acquittal and therefore, this matter was listed today “for questioning of sentence”.

2. Today, when the matter is taken up for hearing the appellant/State secured the accused and produced before this Court. On questioning, the respondent/accused has stated that he has not committed any offence as stated by the prosecution and has also stated that he is suffering from some ailments and he is not able to stand for more than five minutes. Hence, he request this Court to acquit him from the charged offences.

3. The learned counsel for the respondent/accused submitted that considering the ailments of the respondent, this Court may show some leniency and to grant suspension of sentence or award lesser punishment to the respondent.



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4. Heard the learned counsel on either side.

5. Considering the facts and circumstances, this Court finds that the respondent/accused has committed the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and he is convicted for both the charges and considering the mitigating circumstances of age and long pending case, he is sentenced as under:

<i>Offene</i>	<i>Sentence</i>
Section 7 of Prevention of Corruption Act, 1988	to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further period of three months rigorous imprisonment
Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further period of three months rigorous imprisonment
	Both the sentences are ordered to be run concurrently.

6. Since the accused involved in the offences under Prevention of



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Corruption Act that too the main allegation against the accused is that he demanded illegal gratification from the poor people, who applied for free house site pattas to the landless poor villagers, this Court is not inclined to show any leniency and to grant suspension of sentence to the respondent/accused.

15.02.2023

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Note :

- (i) Registry is directed to issue copy of the judgment by today itself **(i.e, on 15.02.2023).**
- (ii) Appellant/Police is directed to secure the custody of the respondent/accused to execute the period of imprisonment.

Copy to: The Superintendent, Central Prison, Salem.



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