IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A.Nos.273 & 277 of 2015
and
M.P.No.1 of 2015

Crl.A.No.273 of 2015

N.Seshachalam,
S/o. Numperumal .... Appellant/Accused No.1

Vs

State Rep. by
The Inspector of Police,
Vigilance and Anti Corruption Unit,
Muthialpet,
Pondicherry.
Cr.No.1 of 2009 .... Respondent/Complainant

Crl.A.No.277 of 2015

Janarthanan,
S/o.Munnusamy .... Appellant/Accused No.2

Vs

State Rep. by
The Inspector of Police,
Vigilance and Anti Corruption Unit,
Pondicherry.
Through Special Public Prosecutor .... Respondent/Complainant

COMMON PRAYER : Criminal Appeals have been filed under section 374 of Criminal Procedure Code to set aside the Judgment dated 22.04.2015 passed by the Special Judge (under Prevention of Corruption Act) Principal Sessions Judge at Puducherry, passed in Special C.C.No.16 of 2010.

In Crl.A.No.273 of 2015

For Appellant	:	Mr.V.Gopinath Senior Counsel for Mr.Swami Subramanian
For Respondent	:	Mr.K.S.Mohandoss Public Prosecutor (Pondicherry)

In Crl.A.No.277 of 2015

For Appellant	:	Mr.C.Arun Kumar
For Respondent	:	Mr.K.S.Mohandoss Public Prosecutor (Pondicherry)

COMMON JUDGMENT

These appeals are filed challenging the order of the Special Judge for Prevention of Corruption Act, Pondicherry, convicting the Village Administrative Officer and his Assistant for receiving Rs.400/- as bribe to forward the application given by one Sivaguru seeking financial assistance under Rajiv Gandhi Social Security Scheme for poor.

2. The said Scheme is meant for widower of the economically weaker section over the death of wife. According to the defacto complainant, (Sivaguru), he lost his wife on 11.01.2009. So, he made an application on 03.03.2009 under the said Scheme. When he met the Village Administrative Officer, Seshachalam(A1), on 09.03.2003, A1 demanded Rs.500/- to forward the application to the Thasildar for processing. When the complainant expressed his inability to pay Rs.500/-, the said Seshachalam has retorted saying for getting Rs.25,000/-, why he hesitate to pay Rs.500/- as bribe. Then Sivaguru gave Rs.100/- to A1 and promised to come back. Not interested to give bribe and get the benefit of the Scheme he has approached the Vigilance and Anti Corruption Police Unit, Pondicherry and lodged a complaint reporting about the demand of illegal gratification by A1-the Village Administrative Office.

3. The complaint was taken for investigation and the Inspector of Police prepared proceedings for the trap. He arranged two official witnesses viz., Suriya Prakash Rao and A.V.V.S.Sasthri. On 20.03.2004

in the presence of the two official witnesses pre-trap procedure demonstrating the significance of phenolphthalein-sodium carbonate test in the presence of the witnesses was conducted by the trap laying officer and the same was recorded. The bribe money of Rs.400/- (4 nos. x 100 rupees) was smeared with phenolphthalein powder and kept in the pocket of the defacto complainant with an instruction that he should not touch the currency note except while handing over the amount to Village Administrative Officer Seshachalam, if he demands the bribe. The trap team thereafter went to the office of the Village Administrative Officer. The defacto complainant Sivaguru entered the room of the Village Administrative Officer, gave the tainted money to Village Administrative Officer on his demand and thereafter, he came out from the room and gave the pre-arrange signal by wiping his face with the hand kerchief.

4. On receiving the signal, the trap team entered in to the room of the Village Administrative Officer and enquired with the defacto complainant, whether the tainted money was received by the accused. The defacto complainant informed the Trap Laying Officer that the

Village Administrative Officer demanded the money and he gave the money to Village Administrative Officer, who received it and after counting it, gave it to his Assistant Janarthanan(A2), who received that money and kept in his shirt pocket. When the Inspector enquired the Village Administrative Officer about the money, he accepted receipt of the money from the defacto complainant and informed that the money is with the second accused Janarthanan. Thereafter, the said Janarthanan took out the money and gave it to the trap laying officer, who asked one of the member in the trap team to verify the currency numbers found in the money given by the second accused with the numbers noted in the entrustment Mahazar. They tallied. The phenolphthalein sodium carbonate test was conducted in the hands of the first accused and the second accused and also in the hands of P.W.2/the defacto complainant. The hand wash solutions were sent to forensic laboratory for test and the report confirmed the presence of phenolphthalein and sodium carbonate solution collected from the right and left hands wash of the accused 1 and 2. Indicating that both the accused have handled the tainted money.

5. Both the accused were tried for the charges under Section 7 of Prevention of Corruption Act, 1988 read with 34 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act,1988 read with 34 of IPC. To prove the charges, prosecution examined 11 witnesses and marked 17 exhibits. In defence, 4 witnesses were examined and 4 exhibits were marked. 6 documents were marked as Court exhibits. 7 material objects were also marked. The tainted currency recovered marked as M.O.1. The remanent solution of the hand dip collected from A1, A2 and P.W.2 were marked as M.O.2 to M.O.7.

6. The Trial Court held both the accused guilty and sentenced them are under : -

> A1 to undergo 4 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, 3 months Simple Imprisonment for the offence under Section 7 of Prevention of Corruption Act, 1988 read with 34 of IPC; sentenced to undergo Rigorous Imprisonment for a period of 4 years and to pay a fine of Rs.1,000/- in default, 3 months Simple Imprisonment for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 read with 34 of IPC;

A2 was sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for 3 months for the offence under Section 7 of Prevention of Corruption Act, 1988 read with 34 of IPC and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, 3 months Simple Imprisonment for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 read with 34 of IPC. The period of imprisonment already undergone was directed to be set off under Section 428 of IPC.

7. Mr.V.Gopinath, the learned Senior Counsel appearing for the first appellant and Mr.C.Arun Kumar, learned counsel appearing for the second appellant submitted that the case of the prosecution suffers inherent defect, therefore, the conviction is liable to be set aside. The defacto complainant, who had grudged over the 1st accused for his refused to entertain the application of the defacto complainant under Rajiv Gandhi Social Security Scheme. The defacto complainant wife died under suspicious circumstances and a criminal case was registered against him and was pending at the time of his application. The defacto

complainant and his brother pressurised the accused to forward the application forthwith inspite of the fact that P.W.2 was suspected for her death. The refusal to forward the application has led to file the malicious complaint with false allegation. This being a malicious prosecution, the official witnesses called to oversee the transaction have not supported the case of the prosecution regarding the demand and acceptance of the bribe money by the appellants on 20.03.2009.

8. The procedure adopted by the trap laying officer is contrary to the manual followed by the Vigilance Police while laying the trap. In this case, the prosecution has first recovered the alleged tainted money and thereafter, conducted phenolphthalein test on the hands of the accused.

9. The specific case of the prosecution is that, the tainted money was received by A1, who in turn gave it to A2 who received it and kept the money in his shirt pocket. However, the pocket portion of A2 was not tested with sodium carbonate solution. Admittedly, the

complaint marked as Ex.P4 was written by the brother of P.W.2, who had accompanied P.W.2 all along till the completion of trap proceedings. Whereas, the prosecution documents conspicuously omitted to mention his presence in any of the documents prepared before the trap, during the trap and after the trap.

10. The learned Senior Counsel also referring the testimony of P.W.4-the mother of P.W.2, who had deposed that for processing the application under Rajiv Gandhi Social Security Scheme, Rs.500/- as bribe was demanded by the 1st accused from her and she gave Rs.100/- and thereafter informed the matter to her son. This testimony is directly contrary to the evidence of P.W.2, who has stated that on 03.03.2009, he gave the application and met the 1st accused on 09.03.2009. At that time the first demand of Rs.500/- was made by the 1st accused and in response she gave Rs.100/- to the 1st accused referring Ex.D2, the application made by P.W.2 for the benefit under the Scheme, the learned Senior Counsel submitted that, this application is dated 18.03.2009 and not 03.03.2009 as deposed by P.W.2. Therefore, the alleged demand of

Rs.500/- and acceptance of Rs.100/- as bribe on 09.03.2009 is false. Not only P.W.2-the defacto complainant but also his mother P.W.4, both alleging that they gave Rs,100/- im-probabilise the case of the prosecution.

11. As an explanation for the recovery of the tainted money of Rs.400/- from the possession of A2. The first accused has mounted the witness box and been examined as D.W.3. He has deposed that on 18.03.2009, P.W.2 Sivaguru and his brother came to the office of the Village Administrative Officer and gave an application and requested to recommend sanction of Rs.30,000/- under the Scheme. He received the application, made endorsement on the back side of the application and forwarded to Revenue Inspector at Mannadipet. The brother of P.W.2 insisted to hand over the application to him and said he will directly submitted it to Revenue Inspector. A1 refused to oblige. Infuriated by that, the brother of P.W.2 challenged that he will deal them and left the office. Thereafter, on 20.03.2009 at about 11'o clock, again P.W.2 and his brother came to the office. The brother of P.W.2 said he wants to remit

the land tax. A1 refused to receive the money from the brother of P.W.2, since he had no land to pay tax. While A1 was engaging in the brother of P.W.2, Sivaguru (PW2) came with police, caught hold of his hands and hands of his Assistant A2. The Inspector enquired about the money when they said he did not have any money. The brother of P.W.2, Veerappan showed the floor and said it is on the floor. But there was no currency on the floor. The police took him and Assistant(A2) to the Vigilance Office and foisted a case.

12. The learned Senior Counsel referring the explanation as deposed by A1 and the infirmity in the case of the prosecution submitted that the Trial Court has failed to properly appreciate the evidence and the prosecution case lack credibility.

13. The learned Public Prosecutor representing the Union Territory of Puducherry submitted that the testimony of P.W.2 regarding demand and acceptance corroborated by the phenolphthalein test conducted in the hands of the 1^{st} and 2^{nd} accused. The explanation as

spoken by the 1st accused examined D.W.3 does not inspire confidence and it is more a self serving statement which fall short of reliability. Though P.W.3, the shadow witness has stated that he did not enter the room of Village Administrative Officer when P.W.2 went inside to give the bribe money, but soon after P.W.2 came out from the room told P.W.3 that the money was received by A1 and handed over to A2. This fact to be proved and corroborated by the Trap Laying Officer who recovered the money from A2 under the Mahazar marked as Ex.P3, in which the entire event has been narrated and P.W.3 has affixed his signature as witness. Therefore, he submitted that the judgment of the Trial Court to be confirmed.

14. Heard the learned counsels appearing for the appellants and the learned Public Prosecutor (Pondicherry) appearing for the respondent and perused the materials available on record.

15. The point for consideration is whether Rs.400/- smeared with phenolphthalein entrusted to P.W.2 at Vigilance Office was

later recovered from the possession of A2 and whether the money was received by A1 as an illegal gratification to do service to the bribe giver viz., Sivaguru in connection with his application for benefit under Rajiv Gandhi Social Security Scheme.

16. The evidence let in by the prosecution, especially the shadow witness, who is supposed to oversee the demand and receipt of illegal gratification has not supported the case of the prosecution. He has categorically deposed that he stayed out side the room of the accused and P.W.2 alone went inside and came back to inform the trap laying officer that the tainted money was received by A1 and handed over to A2. No doubt the hands of A1 and A2 when tested with sodium carbonate solution, the colour less solution turned in to pink. It is the case of the prosecution that the money received by A1 was transferred to A2 and A2 received it and kept it in his shirt pocket. As pointed out by the learned Senior Counsel, the shirt was not recovered and the pocket portion was not tested with the sodium carbonate solution. Moreover, even P.W.2 the bribe giver has not deposed from where the money was recovered by the

trap team. P.W.3 the shadow witness also does not say that from where and whom the money was recovered. In the absence of proof regarding the fact from were the tainted money was recovered by the trap team, the evidence of A1 who has mounted the witness box and explained about the event on that day gets relevant.

17. The place or person from whom the tainted money recovered being uncertain and the shadow witness, who has supposed to oversee the entire transaction so that he will place the correct facts before the Court has clearly stated that nothing happened in his presence and he was asked to sign the prepared mahazar by the trap laying officer and he signed in the Mahazar marked as Exs.P6 and P7.

18. In such circumstances, the rebuttal evidence let in by A1 gains probability. The foundational fact that gratification was demanded for processing the application of P.W.2 on 09.03.2009 itself has not been proved by the prosecution, since the application itself has emanated only on 18.03.2009 a day before the complaint and the earlier demand of

Rs.500/- is spoken by P.W.2 as well as P.W.4/the mother of P.W.2 and both say they paid Rs.100/- individually. Whereas, the prosecution nowhere whispered about the demand made to P.W.4 or receipt of Rs.100/- from P.W.4.

19. It appears that the entire family had ganged up to fix the appellants and the Vigilance Police Unit of Pondicherry had tried to screen the presence of Veerappan, the brother of P.W.2 and has surprisingly introduced the mother of P.W.2 as witness for prosecution which is nowhere recorded in the prosecution document. The trap laying officer has not placed any reasoning why the brother of P.W.2 was accompanying the trap team all through out. When he was neither the witness called to assist the trap team nor asked to accompany the complainant, this Court is unable to ignore the presence of Veerappan as an innocuous incident. A1 in his evidence had specifically stated that two days before the trap, Veerappan came to the office and threatened for not obliging his request to hand over the application directly to him. Ex.D2, which form part of the file marked by the prosecution as Ex.P11

establish the fact that the application for the benefit under the scheme was submitted only on 18.03.2009. When the application itself is given only on 18.03.2009, the complaint/Ex.P4 alleging that A1 demanded bribe of Rs.500/- on 09.03.2009 is unbelievable and illogic. While reading the charge as well as the final report laid by Kaliyamoorthy, Inspector of Police, this Court also finds that the charge filed against the accused person is for demanding Rs.400/- and accepting it on 23.03.2009 for which there is no material before this Court. Even on that ground, this appeal is to be allowed. Since P.W.2 and Trap Laying Officer had deposed the demand and acceptance of Rs.400/- was on 20.03.2009 and not on 23.03.2009 as found in the charge. The error in the date mentioned in the charge is only a irregularity even the evidence placed by the prosecution does not prove that on 20.03.2009 A1 and A2 received the bribe.

20. In the result, both the Criminal Appeals are allowed. The judgment passed by the Special Judge (under Prevention of Corruption Act) Principal Sessions Judge at Puducherry, passed in Special made in

C.C.No.16 of 2010 dated 22.04.2015 is hereby set aside. Fine amount if any paid by the appellants shall be refunded to them. Bail bond if any executed shall stand cancelled. The appellants are set at liberty forthwith unless their presence is not required with any other crime. Consequently, connected miscellaneous petition is closed.

25.04.2023

Internet : Yes/No
Index: Yes/No
Neutral Citation : Yes/No
Lpp

To

1. The Special Judge (under Prevention of Corruption Act)
Principal Sessions Judge at Puducherry.

2.The Inspector of Police,
Vigilance and Anti Corruption Unit,
Muthialpet,
Pondicherry.

3. The Public Prosecutor,
Pondicherry.

Dr.G.JAYACHANDRAN, J.

Lpp

Crl.A.Nos.273 & 277 of 2015
and
M.P.No.1 of 2015

25.04.2023