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Crl.A.No.284 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2023

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.284 of 2015

Munusamy

... Appellant

Vs

The State Rep. by
The Inspector of Police,
Vigilance and Anti Corruption,
Pondichery.
(Crime No.1 of 2003)
Through Special Public Prosecutor.

... Respondent

Prayer:- Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the judgment and conviction and direct the acquittal of the appellant in Special Calendar Case No.4 of 2008 dated 27.04.2015 passed by the learned Special Judge at Puduchery – (under Prevention of Corruption Act).

For Appellant : Mr.V.Aiyakumar

For Respondent : Mr.K.S.Mohandoss
Public Prosecutor (Pondy)



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JUDGMENT

This appeal is filed by the accused in Spl.C.C.No.4 of 2008 for being held guilty by the trial Court viz., the learned Special Judge at Puduchery vide order dated 27.04.2015, for the offences under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1998 (herein after referred to as “the PC Act”).

2. According to the prosecution, one Saravanan who was running a snacks, sweets and savouries business applied for loan at Puducherry Aadidraavidar Development Corporation (herein after referred to as “PADCO”) which is meant for rendering financial assistance to Aadidravida community people for establishing small scale trade. The said application was processed by PADCO and a sum of Rs.2,00,000/- was granted as loan after receiving Rs.10,000/- as margin money. The said Saravanan who received the loan on 27.02.2002, thereafter did not pay any installment towards principal or interest. However, to get subsidy from the District Industries Centre, Puducherry, (herein after referred to as “DIC”) he approached the accused who was working as Manager at PADCO to issue NOC. On perusing the



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statement of payment, the accused refused to issue NOC unless Saravanan pays the over dues.

3. While so, it is alleged that the accused demanded Rs.5,000/- on 20.09.2003. When inspection conducted by the accused along with one Pandurangan, Field Inspector of PADCO for issuance of NOC. Saravanan was not inclined to pay any bribe to get NOC. Hence approached the Vigilance and Anti Corruption Police and gave a complaint on 23.09.2003. Based on his complaint trap was arranged. In the presence of two official witnesses viz., Sellaperumal and Chandrasekar, pre-trap proceeding was conducted at the office of the Vigilance and Anti Corruption. Rs.500/- note in three numbers and Rs.100/- note in fifteen numbers were smeared with Phenolphthalein powder and entrusted to the said Saravanan with an instruction that it should be given to the accused only if he demands. P.W.2 Sellapurmal, then Chief Educational Officer, was instructed to accompany Saravanan to the office of the accused and over see the happening.

4. On 23.09.2003 at about 13.00 hours, the defacto complainant viz., Saravanan (P.W.1) along with Sellapurmal (P.W.2) went to the room of



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the accused. At that time, the accused was not in his seat and therefore, they came out from the office of the accused and waited. After some time, the accused came. Saravanan alone went to the room of the accused and came out after some time and gave the pre-arranged signal. According to Saravanan, when he went to the room of the accused, he asked money and immediately he gave Rs.3,000/- to the accused. The accused enquired whether it is for the due payable or the illegal gratification, he demanded for issuance of NOC. When P.W.1 told him that it is the illegal gratification for NOC, the accused received it and kept it in the table drawer and went to the room of the Managing Director.

5. Thereafter, P.W.1 came out from the room of the accused and gave the pre-arranged signal to the trap team led by P.W.18, I.R.C.Mohan. The team members entered into the room of the accused and conducted Phenolphthalein-sodium carbonate test at the hands of the accused. The right hand dipped in the solution turned it into pale red, whereas left hand dipped in the solution remains colourless. Thereafter, the trap laying officers P.W.18 enquired the accused about the money received from P.W.1. The accused took out the money from his table drawer and handed over it to TLO. Then a



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Mahazar was prepared at the spot and the documents pertaining to the loan application and the request of P.W.1 to grant NOC were seized. On completion of investigation final report filed against the accused.

6. The trial Court having considered the testimony of the witnesses viz., P.W.1 to P.W.21 and the documents marked as Ex.P.1 to Ex.P23 and also the material objects marked as M.O.1 to M.O.5, concluded that the accused had committed the offence of demanding illegal gratification of Rs.5,000/- to issue NOC and in pursuant to the said demand made on 20.09.2003, he received a sum of Rs.3,000/- on 23.09.2003 from P.W.1, thereby committed the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act.

7. The defence document marked as Ex.D.1 is the authorization order issued by the Managing Director of PADCO to recover loan from the beneficiaries who have failed to pay the due. In this order the accused been appointed as head of the second team and given a target to collect a sum of Rs.50,000/- per day and Rs.10,00,000 in a month. This document was not considered favorably by the trial Court to appreciate the probable defence



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raised by the accused that the said amount of Rs.3,000/-, he received from P.W.1 was towards the long due payable by the defacto complainant for the loan availed from the PADCO.

8. Being aggrieved by the conviction and sentence, the preset appeal has been filed.

9. The learned counsel appearing for the appellant would precisely submit that the trial Court has miserably omitted to appreciate Ex.D.1, the authorization of Managing Director P.W.6., constituting two teams to recover loan from the beneficiary and the attempt of the accused to recover the money by passing inspection of the unit run by the defacto complainant on 20.09.2003 and instructed him to pay the due in installments at the earliest possible. This fact of visit to the P.W.1's unit on 20.09.2003 been corroborated by the evidence of Pandurangan, Field Officer who accompanied with the accused and also admitted by P.W.1 himself.

10. It is also pointed out by the learned counsel appearing for the appellant that P.W.1 is a defaulter and after availing loan of Rs.2,00,000/-, he



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has not even purchased the machinery for which the loan was advanced.

During the inspection, he has given certain excuse for not purchasing the machineries. This has been noted by the accused and he pressurize P.W.1 to repay the loan as early as possible. Infuriated false complaint has been given and the money which was recovered from the accused during the trap was tendered to the accused on the pretext that it was towards the payment of loan due.

11. The learned Public Prosecutor (Pondy) representing the Union Territory of Puducherry / the respondent submitted that the explanation given by the accused during the trail did not putforth by the accused soon after the trap. His conduct of receiving money and keeping with himself in the table drawer instead of remitting it with the cashier or directing the P.W.1 to remit it at the cashier counter speaks volume. The explanation put forth as a defence in the course of trial that he was entrusted with the responsibility of collecting loan dues not been fully corroborated by the Managing Director who was examined as P.W.6. who issued Ex.D.1 the authorization to collect over dues.



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12. He further submits that P.W.6 had constituted two teams and the accused/appellant made as head of the second team. He has to take assistance of three other persons named in the authorization letter Ex.D.1. As per the authorization, he should inform about his tour programs to his higher official. In this case, the money has been received in his office and P.W.1 specifically has stated that one of the team member viz., Pandurangam was present at his room and he was asked to go out from the room, when the accused obtained money from him. Therefore, the demand and acceptance of Rs.3,000/- is not for discharge but for motivation to issue NOC is proved by the prosecution. Therefore, the learned Public Prosecutor prayed the conviction and sentence imposed by the trial Court have to be confirmed.

13. Heard the learned counsel appearing on either sides and perused the documents available on record.

14. The point for consideration is whether the money marked as M.O.1 & M.O.2 recovered from the accused/appellant is illegal gratification received by the appellant or the money received towards the part payment of the dues payable towards the loan availed by the defacto complainant P.W.1.



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15. Ex.P.2 is the application submitted by P.W.1 to the DIC for permanent registration to his, “New O.K. Chips and Snacks Products”. This application is dated 06.06.2003. The loan documents submitted by P.W.1 to PADCO and the loan sanction letter form part of Ex.P.9 which is dated 03.07.2003. Scrutiny of Ex.P.9 file indicates that P.W.1 requested loan for Rs.2,20,000/- for which after perusing the project proposal, loan of Rs.2,00,000/- has been sanctioned and notes were prepared by the accused/appellant herein and placed it before the Managing Director for approval. This sanction proposal dated 29.07.2003, which is marked as Ex.P.7 indicates that the loan to P.W.1 was released in the month of July 2003.

16. Thereafter to get permanent registration with DIC and to get interest subsidy of 25%, P.W.1 had made application marked as Ex.P.2. This application is addressed to the Directorate of Industries, Pudhucherry. It is for requesting permanent registration of the small scale industry viz., “New O.K. Chips and Snacks”. On receiving the application, a letter has been addressed to PADCO by the Department of Industries to verify about the credential of P.W.1.



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17. One Vaidegi P.W.3, who was serving as Assistant Manager in the loan section of NSFDC has deposed that the letter marked as Ex.P.7 from the Industries Department dated 29.07.2003 received at her office and she has entrusted it to attend the letter to one Sundaramurthy to attend. In the cross examination she has deposed that prior to that, her seat was attended by one Bharathi, a temporary staff and he was removed from service for dereliction of duty. As a result , there was backlog in attending the files including the file pertaining to P.W.1 received from the Industries Department. She has categorically stated in her deposition that the accused is not cause for the delay. She has also specifically stated that P.W.1 after availing loan has not paid even a single installment. This evidence read along with the evidence of P.W.4 Pandurangan, Field Inspector, who accompanied the accused to the unit of P.W.1 on 20.09.2003 prove that when P.W.1 sought for NOC on 19.09.2003, the accused has informed P.W.1 that without inspecting the unit he will not give NOC. Accordingly, on the next day i.e. on 20.09.2003, the accused along with Pandurangan had inspected the unit. When they went to the unit of P.W.1, he was not present and he came late at about 11.45 a.m., and thereafter on completion of inspection Pandurangan along with the accused returned back to the office. According to P.W.1, at the



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time, there was a demand of illegal gratification of Rs.5,000/-. Again on 22.09.2003, when he went to the office of the accused and enquired about NOC the accused reiterated the demand. Hence, he came to the Vigilance and Anti Corruption Office and gave compliant.

18. As per the prosecution, the demand of Rs.5,000/- to issue NOC, by the accused twice earlier and receipt of Rs.3,000/- towards part payment of alleged illegal gratification on 23.09.2003. Whereas, the accused by way of cross-examination of witness has probalised his defence that the sum of Rs.3,000/- was given by P.W.1 towards loan due which he received and kept it his table drawer and went to the Manging Director room to inform about the payment made by P.W.1. The said defence is probalised by the evidence of P.W.1 itself, who had stated that when he gave the money to the accused, he enquired whether it is towards the due payable or the illegal gratification.

19. In view of the Court, the second part of query is an embellishment invented by P.W.1 to trap the accused who had been persuading P.W.1 to pay the due.



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20. From the evidence, it is clear that P.W.1 is the defaulter of loan.

He has not repaid the loan amount even a single pie. But he wanted NOC from PADCO in order to get additional advantage of loan subsidy of 25% from the Department of Industries, Pudhucherry Government. This has been resisted by the accused. Being infuriated the false complaint has been lodged and the trap has been laid. The receipt of the money meant for repayment of due been converted into illegal gratification due to the dubious design conceived by P.W.1 and co-operated and assisted by the trap laying officer who have not made any preliminary enquiry before conducting trap proceedings.

21. In this regard, to prove earlier animosity against the accused, the evidence of P.W.1 in his chief examination is relevant. P.W.1 has deposed that on 19.03.2003 he went to the PADCO office and met Vaidegi and enquired about the letter from DIC and whether they responded to it. Vaidegi asked him to met the Field Inspector Pandurangan. When he met Pandurangan (P.W.4) and enquired about his file and expressed his difficulty that he had been repeatedly coming to the office more than 4 to 5 times, but



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there is no response and told that he will complaint about him to the higher officials. At that time the accused came out from his room and pacified P.W.1 and told him that why yelling at Pandurangan and enquired about his grievances. Thereafter, he promised to visit his unit on the next day to verify, whether he has purchased all the machinery for which the loan was granted and thereafter his request for NOC will be processed.

22. It is admitted by P.W.1 himself and corroborated by other witnesses that P.W.1 has not purchased all the machineries for which the loan was extended. He has not even paid a single installment. Therefore, there is no chance for P.W.1 to get NOC and hence the accused has refused to give NOC. For the said reason, the disgruntled defaulter has misused the process of law with the help of Vigilance department and caused irreparable loss to the appellant by falsely and maliciously prosecuting him under Sections 7 and 13(2) r/w 13(1)(d) of the PC Act.

23. Hence, the appeal is bound to be allowed. Accordingly, the judgment dated 27.04.2015 passed by the learned Special Judge, Puduchery, in Spl.C.C.No.4 of 2008 is hereby set aside. The appellant/accused is



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acquitted of all charges. Fine amount, if any paid, shall be refunded to the
appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

24. In fine, the present Criminal Appeal stands allowed.

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

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To

1. The Special Judge,
Puduchery.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Pondichery.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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Dr.G.JAYACHANDRAN, J.,

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