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CRL A No.53 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.53 of 2015

V.Manoharan

... Appellant

Vs.

State by

The Deputy Superintendent of Police

Vigilance and Anti-Corruption

Cuddalore, Cuddalore District

(Crime No.14 of 2002)

... Respondent

Prayer : Criminal Appeal filed under Sections 374 read with 389 of Criminal Procedure Code, praying to call for the entire records in so far relate to Special Case No.5 of 2004, dated 08.01.2015 on the file of the Special Judge/Chief Judicial Magistrate, Cuddalore, Cuddalore District and set aside the same.

For Appellant : Mr.S.Ashok Kumar, Senior Advocate
for Mr.P.Palaninathan

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment passed in Special Case No.5 of 2004, dated 08.01.2015 on the file of the Special Judge/Chief Judicial Magistrate, Cuddalore, Cuddalore District.

2. The respondent police registered the case in Crime No.14 of 2002 against the appellant for the offence under Section 7 of Prevention of Corruption Act, 1988 and after investigation, laid charge sheet before the Special Court/Chief Judicial Magistrate, Cuddalore, for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The learned Special Judge, after taking cognizance of the charge sheet on file in Spl.Case No.5 of 2004 and after completing the formalities, framed the charges for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act.

3. After framing the charges, in order to substantiate the case of the prosecution during trial before the trial Court, on the side of the



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prosecution, totally 14 witnesses were examined as P.W.1 to P.W.14 and 34 documents were marked as Exs. P.1 to P.34 besides, 3 material objects were exhibited as M.O.1 to M.O.3.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence was produced.

5. On conclusion of trial after hearing the arguments advanced on either side and considering the materials, the trial Court found the guilt of the accused for the offences under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo six months rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo simple imprisonment for a further period of one month for the offence under Section 7 of Prevention



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of Corruption Act 1988; to undergo one year rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo simple imprisonment for a further period of 3 months for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Further, all the sentences were ordered to run concurrently and the period of remand already undergone by the accused was ordered to set off under Section 428 Cr.P.C.

6. Aggrieved over the said Judgment of conviction and sentence, the accused has filed the present appeal before this Court.

7. The specific case of the prosecution is that the appellant was working as a Municipal Commissioner in Panruti Municipality, Panruti, Cuddalore District. One Devasena who was a registered Contractor in the Panruti Municipality, was allotted for the contract work for the construction of the first floor building of the Melapalayam Municipal Middle School of Panruti Municipality for the estimated value of Rs.2,50,000/-. One Senthil Kumar who is the son of the above said Registered Contractor Devasena, was a power agent of the said



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Devasena. The said allotted work was commenced in August 2002 and the same was completed on 30.11.2002 and that the first payment of Rs.1,35,000/- after deduction of sales tax, surcharge etc. was paid on 31.10.2002. The final payment after completion of the work to be paid was Rs.1,01,150/- after due deductions. The appellant who is the Municipal Commissioner, inspected the said construction work on 03.12.2002 at about 12.00 p.m. and he asked the said Senthil Kumar who is the power agent of the registered contractor Devasena, to meet him at his office. Accordingly, when he met the appellant at his office on the same day at about 1.30 p.m., he requested the appellant to pass the final bill and to issue cheque for the completed construction work. At that time, the appellant demanded a sum of Rs.2,000/- from him as bribe for passing the final bill and issuance of the cheque for the sum of Rs.1,01,150/- and that the appellant asked the defacto complainant to pay the said bribe amount at about 6.00 p.m. on the same day. Since the said Senthil Kumar was not willing to pay the bribe amount to the appellant, he approached the respondent police and preferred a complaint on the same day at about 3.00 p.m. and after completing the preliminary



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enquiry, the Inspector/P.W.13, arranged for trap proceedings.

Subsequently, pre-trap demonstration was also conducted. Thereafter, the said Senthil Kumar/defacto complainant/P.W.2 along with the official witness/P.W.3 went to the office of the appellant at about 8.00 p.m. and when they met the appellant, the appellant reiterated his demand and therefore, the defacto complainant/P.W.2 gave money which was subjected to smearing with phenolphthalein powder during the pre-trap demonstration, to the appellant. The appellant who accepted the tainted money, counted and kept the same in the left side of his table drawer and directed the complainant to come on the next day. Thereafter, the defacto complainant came out of the office of the appellant and showed the pre-arranged signal to the trap laying team and on seeing the same, the trap laying team approached the appellant and caught him red handed. The phenolphthalein test which was conducted in the hands of the appellant, turned positive and the bribe money was also recovered from the appellant through seizure mahazar. Subsequently, the appellant was arrested and after completion of investigation, charge sheet was laid. Hence, the present case.



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8. The learned counsel for the appellant would submit that P.W.1 without applying her mind has accorded sanction for prosecution and therefore, the sanction order is not valid under law. He would submit that the defacto complainant/P.W.2 was already paid a sum of Rs.1,35,000/- out of the total bill amount of Rs.1,45,523/-. On contrary, the defacto complainant/P.W.2 has stated that his arrears amount of Rs.1,01,150/- to be paid to him by the Municipality. When the appellant is not liable to issue a cheque for Rs.1,01,150/-, there is no question of demanding bribe for issuance of cheque for the said amount. Therefore, it is clear that P.W.1 while according sanction, had not applied her mind and in a routine manner, she has put her signature in the sanction order which would vitiate the case of the prosecution. Further, in his cross examination, the defacto complainant has admitted that his mother is the Municipality Contractor cum Lessee and he is only a power agent of his mother and he has also admitted that the cheque was not ready since because his mother had to pay the lease amount to the Panruti Municipality. Further, he has admitted in his cross examination that the Junior Engineer and the Municipality Engineer have to prepare the bills



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and thereafter, the bills would be sent to the accountant and only thereafter, it would be placed before the commissioner for passing orders.

But in this case, the defacto complainant's mother had already given a letter to the Municipality to adjust the lease amount payable by her with the amount payable by the Municipality to her towards the construction of the school. Hence the cheque was not prepared by the Municipality.

The defacto complainant is well aware of the same. In spite of that, he has stated that the appellant demanded a sum of Rs.2,000/- from him for issuance of cheque for Rs.1,01,150/- which is not believable. He would further submit that the prosecution has not proved the prior demand alleged to have been made by the appellant. Moreover, mere possession of tainted money would not amount to obtaining of bribe to constitute an offence under the Prevention of Corruption Act. He would further submit that it is the bounden duty of the Trap Laying Officer to examine the accused and to get his explanation after his arrest at the place of trap. But in this case, the Trap Laying Officer did not follow the same which is a clear violation of the mandatory provision namely Rule 47 of Manual of the Directorate of Vigilance and Anti-Corruption. Further, the recovery



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was not made before any of the independent witnesses. Therefore, the prosecution failed to prove the prior demand, acceptance and also recovery in the manner known to law. As already stated, the appellant was not suppose to issue any cheque to the defacto complainant for a sum of Rs.1,01,150/- and therefore, there is no necessity for the appellant to demand any bribe amount from the defacto complainant for the issuance of cheque for said amount. Further he would submit that during the trap laying proceedings in the office of the Municipality, there were so many independent witnesses available and other public were also available. But the Investigating Officer failed to get their signatures as witnesses. In trap cases, the three main ingredients viz. the demand, acceptance and recovery have to be proved by the prosecution in the manner known to law. Otherwise, the conviction cannot be recorded against a public servant, whereas in this case, the prosecution has not proved the same and no corroborative evidence was let in to establish the prior demand of bribe and that the prosecution has failed to prove its case with corroborative evidence. The trial Court failed to consider all the legal as well as the factual aspects and erroneously came to the



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conclusion that the appellant demanded and accepted bribe amount from the defacto complainant and the same was also recovered from the appellant, which is perverse. As already stated, it is settled proposition of law that the *sine qua non* for the constitution of the offence under Section 7 of the Prevention of Corruption Act especially in the trap case, the demand, acceptance and recovery have to be proved in the manner known to law, whereas in this case, none of the ingredients was proved by the prosecution in the manner known to law and that the non examination of the independent witness, is also fatal to the case of the prosecution. The trial Court failed to appreciate the evidence properly and erroneously recorded conviction. Therefore, the Judgment of the trial Court warrants interference.

9. The learned Additional Public Prosecutor appearing for the State would submit that though the mother of the defacto complainant is the Registered Contractor in Panruti Municipality, as a power agent, her son/the defacto complainant only was dealing with her official work and he only informed the appellant about the completion of construction



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work to the appellant. Subsequently, the appellant went along with the defacto complainant and inspected the construction work and thereafter, asked the defacto complainant to come to his office and when the defacto complainant went to the office of the appellant, the appellant demanded bribe of Rs.2,000/- from the defacto complainant and also asked him to give the said amount on the same day at 6.00 p.m. Since the defacto complainant did not want to give bribe to the appellant, he approached the respondent police and gave a complaint and the respondent police, based on the preliminary enquiry, registered a case and arranged for trap and also conducted pre-trap demonstration. Subsequently, they went to the office of the appellant where the defacto complainant/P.W.2 met the appellant in his office along with the shadow witness/P.W.3 during which, the appellant reiterated his demand of bribe and also accepted the same from the defacto complainant/P.W.2. Thereafter, on seeing the pre-arranged signal from the defacto complainant/P.W.2., the trap laying team approached the appellant and conducted phenolphthalein test and the same resulted positive and subsequently, the bribe money was recovered from the appellant through seizer mahazar. The appellant also not denied



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the fact that the defacto complainant's mother was entrusted with the said construction work and the work was also completed and that the bill was due to them. Therefore, under these circumstances, from the evidence of P.W.2/defacto complainant, P.W.3/shadow witness, P.W.13/Inspector of police and Ex.P.3/Entrustment mahazar and Ex.P.4/Seizure Mahazar, the prosecution proved its case beyond all reasonable doubt. The trial Court rightly appreciated the evidence and convicted the appellant. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed

10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

11. Admittedly, the appellant was working as a Commissioner in the Panruti Municipality, Cuddalore and the mother of the defacto complainant was a registered Contractor in the said Municipality and that the construction of the first floor building of the Melapalayam Middle School for the estimated value of 2,50,000/- was allotted to the mother of the defacto complainant. The defacto complainant as a power agent of his mother Devasena, was doing the contract work on behalf of her.



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12. In order to substantiate the charges framed against the appellant, on the side of the prosecution totally 14 witnesses were examined and out of the 14 witnesses, the defacto complainant was examined as P.W.2. The shadow witness was examined as P.W.3 and the Trap Laying Officer was examined as P.W.13.

13. P.W.1 is the sanctioning officer and she has spoken about according sanction for prosecution against the appellant.

14. In his evidence, the defacto complainant/P.W.2 has clearly narrated the entire incident. According to him, on 03.12.2002 at about 12.00 p.m. after inspecting the said construction work, the appellant asked the defacto complainant to meet him at his office and when the defacto complainant met the appellant in his office on the same day at about 1.30 p.m., the appellant demanded a sum of Rs.2,000/- from the defacto complainant as bribe for passing the final bill and issuance of the cheque for the sum of Rs.1,01,150/- and also asked the defacto



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complainant to pay the said bribe amount at 6.00 p.m. on the same day.

Since the defacto complainant did not like to give bribe, he approached the respondent police and lodged a complaint and subsequently, a case was registered and trap was conducted. Therefore, the initial demand made by the appellant was proved by the evidence of P.W.1. Further, he has spoken about meeting of the appellant at his office along with P.W.3/shadow witness and giving of bribe amount to the appellant on his demand and thereafter, showing the pre-arranged signal to the trap laying team and identifying the appellant to the Trap Laying Officer.

15. P.W.3 is the shadow witness and he has clearly stated that on 03.12.2002, he and one Narasingan were called by the respondent police to stand as witnesses for the trap and in their presence, pre-trap demonstration was conducted and entrustment mazahar was also prepared and the same was marked as Ex.P.3. Thereafter, he along with P.W.2/defacto complainant went and met the appellant in his office at about 7.50 p.m., where the appellant reiterated his demand and therefore, P.W.2/defacto complainant gave the money to the appellant which was



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mentioned in the entrustment mahazar and after receiving the money, the appellant counted the same and kept in the left side drawer of his table. Thereafter, they came out and showed the pre-arranged signal to the trap laying team. Subsequently, the trap laying team approached the appellant and P.W.3 identified the appellant to the trap laying officer and thereafter, P.W.2 was asked to leave that place. Thereafter, in the presence of P.W.3 and the said Narasingan, the trap laying officer conducted phenolphthalein test and also recovered the tainted money from the appellant under Exp.4/seizure mahazar and also prepared observation mahazar. Subsequently, the house of the appellant was also searched.

16. The evidence of P.W.3/shadow witness, was corroborated with the evidence of P.W.2/defacto complainant. The evidence of P.W.3 clearly shows that on the date of occurrence at about 8.00 p.m., he along with P.W.2 met the appellant during which, the appellant reiterated his demand and in his presence, the appellant has also accepted the bribe money from the defacto complainant/P.W.2. Therefore, from the evidence of P.W.3/shadow witness, the prosecution has proved the subsequent



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demand and acceptance. The Ex.P.3/Entrustment Mahazar, Ex.P.4/Seizure Mahazar and Ex.P.5/Observation Mahazar have also been substantiated the evidence of P.W.2 and P.W.3.

17. P.W.13 is the Trap Laying Officer and he has also corroborated the evidence of P.W.2 and P.W.3 and he has spoken about receiving complaint from the defacto complainant/P.W.2 and subsequently, issuing of summons to two persons to stand as witnesses to the trap proceedings, conducting pre-trap demonstration and preparing entrustment mahazar by noting down the numbers of the currency which was decided to give to the appellant. He has further stated that after the trap, they recovered the money from the appellant through seizure mahazar/Ex.P.4 and that the recovered currency numbers were tallied with the numbers mentioned in the entrustment mahazar/Ex.P.3 which clearly proved that the appellant received money from the defacto complainant.

18. The evidence of P.W.12/Scientific Assistant Grade-II and Ex.P.22/Chemical report also clearly proved that the appellant had



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handled the currency mentioned in the entrustment mahazar.

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19. The Assistant Engineer in the said Municipality during the relevant period of time was examined as P.W.4 and he has spoken about receiving tender for the construction of additional class room in the first floor of the Melapalayam Middle School for the estimated value of Rs.2,50,000/- and allotment of the said work to the mother of the defacto complainant. Further he has spoken about supervising the said construction and making entry in the M Book/Ex.P.8.

20. P.W.10 who was Assistant Engineer in the said Municipality during the relevant period, has spoken about preparation of estimate for the value of Rs.2,50,000/- for the construction of first floor building in the Melapalayam School/Ex.P.18, receiving tender and preparing comparative statement/Ex.P.19 and allotment of work/Ex.P.20 to the mother of the defacto complainant who is a registered Contractor.

21. P.W.11 who was the Junior Assistant in the said Municipality during the relevant point of time, has spoken about the power of attorney



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executed by the said Devasena in favour of his son/defacto complainant/P.W.2 to carry out the contract works related to Panruti Municipality.

22. P.W.9 who was a Junior Assistant in the said Municipality has stated that on 03.12.2002 at about 7.45 p.m., M Book, Estimate register and relevant files were on his table and he kept the same in the Bureau of the Accountant/P.W.7.

23. Ex.P.7 is the file related to tender, Ex.P.8 is M Book, Ex.P.9 is the Estimate allotment Register, Ex.P.10 is the Page No.7 of Ex.P.9, Ex.P.11 is entry made for orders of construction of classroom in Page No.7 in Ex.P.9 (Entry made by P.W.5 for payment of contract amount), Ex.P.12 is Records of Contract Schedule (Page No.4 in Ex.P.7), Ex.P.19 is the comparative statement and Ex.P.20/work order.

24. Therefore, from the evidence of P.W.4, P.W.10, P.W.11 and Exs.P.7 to P.12, Exs.P.19 and P.20, the prosecution proved that the tender



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allotment for the said construction work was given to the mother of the defacto complainant and the said work was also done by her through his son/P.W.2 who was her power agent.

25. PW.8 who was the night watchman in the Municipality in which the appellant was working, has clearly stated that while he was on duty on 03.12.2002, at about 7.30 p.m., P.W.2 and yet another person came to the Municipality office and 10 minutes later, police also came to their office.

26. Eventhough the learned counsel for the appellant submitted that P.W.13/Trap Laying Officer has not followed the Rule 47 of Manual of the Directorate of Vigilance and Anti-Corruption, a perusal of the records shows that P.W.13/Trap Laying Officer has followed all the procedures. Further, the evidence of P.W.2/defacto complainant, P.W.3/shadow witness, P.W.13/Trap Laying Officer, Ex.P.3/Entrustment Mahazar and Ex.P.4/Seizure Mahazar, have proved the main ingredients of demand, acceptance and recovery. Even assuming that the Rule 47 of



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Manual of the Directorate of Vigilance and Anti-Corruption was not followed, the same alone will not vitiate the case of the prosecution. The Manual of the Directorate of Vigilance and Anti-Corruption is only a guideline for procedures to be followed by the Vigilance Department during trap proceedings and it is not an Act and therefore, it cannot be considered as mandatory and mere procedural violation, may not defeat the substantial justice. Therefore, the contention of the learned counsel for the appellant is not acceptable.

27. Therefore, from the evidence of the above said witnesses and oral and documentary evidence, this Court finds that the prosecution has proved its case beyond all reasonable doubt. Once the demand, acceptance and recovery are proved, there is a statutory presumption under Section 20 of the Prevention of Corruption Act. Then, it is for the accused to rebut the presumption in the manner known to law, whereas in this case, the appellant has not rebutted the presumption in the manner known to law.



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28. Under these circumstances, this Court being a first appellate Court as a final Court of fact finding, while re- appreciating the entire evidence, finds that the appellant has committed the charged offences and the trial Court has rightly appreciated the evidence and convicted the appellant as stated above. This Court finds no perversity in the appreciation of evidence by the trial Court and there is no merit in the appeal and the appeal is liable to be dismissed.

29. Accordingly, this Criminal Appeal is dismissed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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Index:Yes/No

To

1. The Special Judge/Chief Judicial Magistrate,
Cuddalore, Cuddalore District.
2. The Deputy Superintendent of Police
Vigilance and Anti-Corruption, Cuddalore, Cuddalore District.
3. The Public Prosecutor Officer, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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