



Crl.A.No.544 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 13.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.544 of 2015

D.Srinivasan

... Appellant

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore.

... Respondent

Prayer:

Criminal Appeal filed under Section 374 (2) Cr.P.C., to call for the entire records pertaining to the judgment of conviction and sentence passed in Special Case No.28 of 2014 dated 31.07.2015 on the file of the Special Court for Prevention of Corruption Cases at Villupuram for offence under Section 7 and 13(2) read with 13(i)(d) of the Prevention of Corruption Act 1988 and set aside the same and acquit the appellant.



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For Appellant: Mr.R.Raja Rathinam, Senior Counsel
for M/s.V.R.Appaswamee

For Respondent : Mrs. G.V.Kasthuri
Additional Public Prosecutor (V&AC)

JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 31.07.2015 passed in Special Case No.28 of 2014 on the file of the Special Court for Prevention of Corruption Cases at Villupuram.

2. The respondent police registered the case against the appellant in Crime No.12 of 2002 for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. After investigation, the respondent police laid a charge sheet before the Chief Judicial Magistrate Court at Villupuram and the learned Magistrate has taken the case on file in Special Case No.08 of 2003. Thereafter, the said case was transferred to the Special Court for Prevention of Corruption Act Cases, Villupuram. After completing formalities, the learned Special Judge has taken the case on file in Special Case No.28 of 2014.



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3. After framing of charges and completing the formalities during trial, in order to prove the case of the prosecution, as many as ten witnesses were examined as P.Ws.1 to 10 and eleven documents were marked as Exs.P1 to P11. Besides, three material objects were exhibited as M.O.1 to M.O.3.

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

5. On completion of trial and hearing the arguments advanced on either side, the trial judge found the appellant guilty for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and convicted the accused and sentenced him to undergo one year rigorous imprisonment for an offence under Section 7 of Prevention of Corruption Act and to pay fine of Rs.1000/-, in default to undergo three months simple imprisonment. Further, the appellant was convicted and sentenced to undergo



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one year rigorous imprisonment for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act and to pay fine of Rs.1,000/-, in default to undergo three months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present criminal appeal before this Court.

6. Specific case of the prosecution is that the appellant was working as Firka Surveyor at Chinnasalem, Kallakurichi Taluk, Villupuram District. The defacto complainant has approached the appellant by way of application, to measure his lands situated at Poosappadi village. He also enclosed a challan for the remittance of Rs.480/- along with the application. After lapse of fifteen days, when the defacto complainant enquired about the date of survey of his land, the accused demanded Rs.3,000/- as illegal gratification to facilitate the survey of his land. Since the defacto complainant was not willing to pay the same to the accused, he approached P.W.7, the Inspector of Police, Vigilance and Anti Corruption, Cuddalore, and made written complaint against the appellant/accused. Hence the present case.



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7. Learned counsel for the appellant submitted that false case has been foisted against the appellant. According to the prosecution, initially at the time of making application, he has not demanded money and he informed that he will measure the land whenever he finds time and free. Therefore, it is not the case of the prosecution that at the first instance itself, the appellant demanded money. Since the land is jointly belonging to the defacto complainant, his father and brother, he asked the defacto-complainant to bring their consent letter. But the defacto-complainant failed to do so. The defacto complainant totally suppressed the rights and interest of his brother and father over the land and he has stated in his complaint that the aforesaid land exclusively belonged to him. The prosecution failed to note that the defacto complainant made the application to survey his land on behalf of his brother and father in the absence of their consent letter or any other authorized document. There is no necessity for the appellant to demand money from the defacto-complainant. He has stated in his explanation during questioning under Section 313 Cr.P.C., that already several applications are pending in his office which are earlier applications prior to the defacto complainant. Therefore, he has to measure the property as



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per seniority of the applications. Hence without following the seniority, he cannot do the needful for the complainant. Fact remains that, it is highly improbable that the appellant demanded bribe from the defacto complainant. Further, it is stated by the prosecution that the appellant received money in his house. If at all he is in the house, there is no need to keep the money under the notepad. When the defacto complainant along with P.W.3 met the accused in his camp office cum residence, the appellant after ascertaining the readiness for the survey of land, he left his office room and went inside the house to bring the records pertaining to the land survey and by using the non-availability of the appellant, the defacto complainant placed the tainted currency notes underneath the writing pad. Further, the process of survey and measurement of land should be done in the presence of Surveyor and VAO of the village concerned. There is no evidence to show that he already informed to V.A.O regarding survey and measurement to the land of P.W.2. There was a delay in filing the complaint, registering the case and sending the records to the Court. The prosecution has failed to prove the charges levelled against the appellant. The prosecution has not proved its case beyond all reasonable doubt when there is no demand of bribe and the acceptance of money. The Trial Court



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failed to consider all the facts and also the defect in investigation, erroneously convicted the appellant, which warrants interference of this Court.

8. Learned Additional Public Prosecutor appearing for the State has submitted that the defacto complainant made an application to measure his land before the accused who is the Firka Surveyor of Chinnasalem, for which he demanded Rs.3,000/- as illegal gratification from him. Since the bribe amount demanded by the accused is very high, the defacto complainant expressed his inability and requested to reduce the bribe amount, for which, the accused refused his request. On 17.10.2002, again when the complainant approached the accused in his camp office cum residence, he instructed the complainant to pay advance amount of Rs.1000/- on the next day. Since the defacto complainant was not willing to pay the same to the accused, he approached P.W.7, the Inspector of Police, Vigilance and Anti Corruption, Cuddalore, and made written complaint against the appellant/accused. On receipt of the complaint, the Inspector of Police, Vigilance and Anti Corruption after getting permission from the Higher Officials, registered the case against the accused and took up the investigation. Further he made necessary steps to conduct the



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trap proceedings. After completing pre-trap proceedings, P.W.2 along with P.W.3 and other trap raiding officers went to the office of the accused. When the accused asked P.W.2 about his demand, P.W.2 gave M.O.1 series currency notes, which were coated by Phenolphthalein, to the accused. Thereafter P.W. 2 showed pre-planned signal and noting the same immediately P.W.7 and others the trap raiding team came there and caught hold the accused. Phenolphthalein test was conducted, which showed positive and money was recovered and hence the accused was arrested.

9. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused all the materials available on record.

10. In order to substantiate the charges, prosecution examined ten witnesses out of which the defacto complainant was examined as P.W.2, has spoken about the official position of the appellant and purpose for which he approached him and regarding initial demand and subsequent reduction of earlier demand, acceptance of bribe by the appellant/accused and recovery of



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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.

11. P.W.2 has clearly deposed that on 04.09.2002 he approached the accused to measure his land, by way of application along with challan for the remittance of Rs.480/-. Since he did not turn up to survey his land, again on 15.10.2002 when he approached the accused, he demanded sum of Rs.3,000/- as bribe. Since he evaded to measure his land, again he approached the appellant on 17.10.2002 and requested to reduce his earlier demand of Rs.3,000/-, for which the accused reiterated his earlier demand and directed P.W.2 to pay Rs.1000/- at first instalment and to pay the balance amount on the date of survey of his land. P.W.3, who is the shadow witness has deposed about the pre-trap demonstration of trap laying proceedings. He has clearly corroborated the evidence of P.W.2. He also further stated that he accompanied with the trap laying team went to the appellant's house and asked the appellant about the bribe money which he received from P.W.2. The appellant has taken the money which is kept underneath the writing pad. The trap laying team



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conducted phenolphthalein test which turned positive. Evidence of P.W.3 corroborated with the evidence of the defacto complainant/P.W.2 and P.W.7.

P.W.7, who is the trap laying officer clearly stated about the receipt of complaint from the defacto-complainant, trap laying proceedings and recovery of money-M.O.1 series. From the evidence of P.W.2-defacto complainant, P.W.3-shadow witness and P.W.7-trap laying officer, prosecution has proved its case beyond all reasonable doubt. Though the learned counsel for the appellant vehemently contended that during the proceedings under Section 313 Cr.P.C., the appellant has stated that he informed the defacto complainant about the pending applications prior to the defacto complainant and as per seniority, he will measure the property, but none of the suggestion/question has been put before any of the prosecution witnesses. The defence taken by the appellant during the proceedings under Section 313 Cr.P.C., is after thought. Evidence of prosecution witnesses were not challenged by the defence during cross examination of the prosecution witnesses.

12. Once the prosecution has proved the demand, acceptance of bribe and the recovery of the money, Section 20 of Prevention of Corruption Act



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would come into play. It is a settled proposition of law that once prior demand, acceptance and recovery of money are proved, there is presumption under the Prevention of Corruption Act and the accused has to rebut the presumption 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 Prevention of Corruption Act.

13. From the evidence of P.W.2 and P.W.3, initial payment, demand and acceptance on the date of occurrence by the appellant were proved. From the evidence of P.W.3 and P.W.7, recovery also proved. In this case, P.W.3 is the shadow witness who is the independent witness has corroborated the evidence of P.W.2-defacto complainant and P.W.7-trap laying officer. The contradictions pointed out by the learned counsel for the appellant are minor contradictions which are not material contradictions and the same would not affect the case of the prosecution. Since it is a case based on the trap proceedings and the accused was caught red-handed, the Court has to see as to whether prior demand, acceptance of bribe and recovery are proved by the prosecution beyond all reasonable doubt. This Court being the appellate court



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and final Court of fact finding, has to re-appreciate and re-visit the entire evidence and give independent finding. On a careful perusal of the materials, this Court finds that the appellant has committed the charged offences. The trial court rightly appreciated the evidence and convicted the appellant for the abovesaid charges and sentenced him as stated above. This Court does not find any perversity or any reason to interfere with the impugned judgment of the trial court. 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. Since the appellant is on bail, the trial court is directed take steps to secure the accused to undergo the remaining period of sentence, if any.

13.02.2023

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Index:yes/No

Speaking Order:Yes/No

Neutral Citation: Yes/No



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To

1. The Special Judge,
Special Court for Prevention of Corruption Cases at Villupuram.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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