IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No. 567 of 2015

K.Selvadhurai ... Petitioner

Vs.

State Represented by
Inspector of Police
Vigilance and AntiCorruption
Cuddalore District
(Crime No.7 of 2007) ... Respondent

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C to allow the appeal by setting aside the Judgment made in Special Case No.5 of 2008 on the file of the Special Judge/Chief Judicial Magistrate, Cuddalore-District, Cuddalore dated 26.08.2015 in pursuance of the Crime No.7 of 2007 on the file of the V&AC, Cuddalore.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel
for M/s.D.Veerasekaran
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

JUDGEMENT

This appeal is directed against the Judgment of the Trial Court passed in Special Case No.5 of 2008 on the file of the Special Judge/Chief Judicial Magistrate, Cuddalore District, Cuddalore.

2. The case of the prosecution is that the Defacto complainant R.Shanmugam wanted to register the association by name "Thagam Kalai Kudumbam". Therefore, he went to the District Register Officer, Cuddalore on 05.10.2007 to register his association.

3. The appellant K.Selvadhurai who was serving as Assistant in the Office of the District Registrar Office, Cuddalore received this application on 16.10.2007 and after perusing the documents, instructed the defacto complainant to pay a fee of Rs.555/- for the registration. Besides to pay Rs.500/- as bribe to process the registration. The defacto complainant promised to pay the registration fees of Rs.555/- and assured to pay the bribe money while receiving the registration certificate. Since he was not inclined to pay bribe, made a complaint to the respondent police about the demand of illegal gratification by the appellant herein.

4. Pursuant to the complaint dated 24.10.2007 trap was laid and the appellant was caught red handed with tainted money of Rs.300/- which he accepted to receive, when the defacto complainant met him on 22.10.2007. The demand and receipt of money was witnessed by the shadow witness/ P.W.3. Mahazar was drawn for the recovery after obtaining sanction to prosecute the petitioner herein. On completion of the investigation, final report was filed before the trial Court. The trial Court, after considering the documents, framed charges under Section 7 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988. To prove the charges, prosecution has examined 16 witnesses and marked 37 Exhibits and also marked 5 material objects. In defence, the accused has marked three exhibits.

5. The case of the prosecution unravelled by the exhibits and deposition as below:-

The complaint of P.W.1 marked as Ex.P.3 is dated 24.10.2007. In this complaint, the defacto-complainant who was examined as P.W.2 has stated that he met the accused on 16.10.2007 for registration of his documents. On that day, the first demand of Rs.500/- was made by the accused. Again he went to the District Register Office on 22.10.2007 after giving him the receipt for Rs.555/-, the accused made 2nd demand. The defacto complainant bargained with him and settled for Rs.300/-. The accused/appellant them told the defacto complainant to come on 24.10.2007 with the bribe money. Reporting the same, the complaint dated 24.10.20107, which is marked as Ex.P.2 given to the Inspector of Police, Vigilance and Anti-corruption, Cuddalore at 9.00 hours. This complaint being taken up and registered in Crime No. 07 of 2007. Two official witnesses were called to witnesses the trap. The Entrustment Mahazar Ex.P.4 prepared between 11.15 to 12.15 hours. The trap team proceeded to the District Register Office and reached there at 12.30 hours and met the accused on 12.50 hours. At that time, the accused demanded Rs.300/- then smeared with Phenolphthalein Powder was handed over to the accused. After receiving the pre-arranged signal from P.W.2/defacto complainant, the trap team headed by Inspector of Police/P.W.14 entered into the office and had conducted Phenolphthalein Test in the hands of the accused. Thereafter Rs.300/-, kept in the pant pocket of the accused was recovered under the Mahazar Ex.P.9. The hand wash samples sent to the laboratory was tested in the lab by P.W.11 and the report Ex.P.35 discloses the presence of Phenolphthalein and Sodium carbonate in the hand wash solution. Though the defacto complainant/P.W.2 turned hostile, the trial court relying upon Section 20 of the Prevention of Corruption Act has convicted the appellant to under go six months of RI and to pay a fine of Rs.1,000/- in default, one month of RI for the offence under Section 7 of Prevention of Corruption Act, 1988 and one year RI and to pay a fine of Rs.1000/- in default, two months R.I for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

6. The defence taken by the accused was that the money was received towards small savings targets and there was target to each office to collect small savings from the public, this was disbelieved by the Trial Court for the reason ground that if the appellant/accused had collected Rs.300/- from P.W.2, for small savings then there is no necessity for P.W.2 to give a complaint before Vigilant and Anti-corruption alleging the accused demands illegal gratification for registering the association. Furthermore, if the money was received for small savings scheme then on receipt of the money, the accused ought to have issued receipt for the same. In the absence of any receipt, the explanation given by the accused found not satisfactory or possible explanation to rebut the presumption under Section 20 of Prevention of Corruption Act, 1988.

7. The learned senior counsel appearing for the appellant submitted that the trial court miserably failed to appreciate the evidence appropriately and the defence exhibits marked as Ex.D.1 to Ex.D.3. and the testimony of P.W.4, the District Registrar, Cuddalore who had deposed that Rs.15 lakhs was fixed as target for the Register Office, Cuddalore towards the collection of small savings from the public and each staff of the Register Office has been given the task of collecting small savings from the public ignored by the trial court.

8. As far as, the accused is concerned, he was assigned to collect Rs.2,60,000/- as per Ex.D.3. P.W.2 the defacto complainant has also admits that he gave Rs.300/- for the small savings. Since he did not support the earlier statement, he was treated hostile by the prosecution. When the possible explanation given by the accused for the possession of the tainted money corroborated the key prosecution witness, the trial court ought to have accepted the same. In-spite of discharging the onus of proof by rebuttal evidence, the trial court ignored the same and on relying the evidence of the shadow witness examined as P.W.3 has erroneously convicted the accused.

9. The learned Senior Counsel for the appellant reading through the evidence of the P.W.3 and the seizure mahazar marked as Ex.P.5 submitted that even P.W.3, the shadow witness has not whispered that the tainted money was received by the accused as illegal gratification. The contemporaries document namely the recovery mahazar marked as Ex.P.9 only say that on 24.10.2007, when the defacto complainant met the accused, enquiring whether he has brought the money. The enquiry officer does not querry does not qualify whether he has brought the bribe money. While the accused has explained what he demanded and receive from PW.2 was the money for small savings and to support the explanation he had marked Ex.D1 to D3, which are minutes of the District Officers Review Meeting fixing target to every office by the Collector. The trial court have ignored the same for convicting the appellant.

10. The learned Government Advocate (Crl.Side) for the state would submit that the trial court has rightly declined to accept the explanation of the accused, since the minutes of the District Officers, review meeting and the target and the proceedings of the District Collector, were of the month April, whereas the incident took place 6 months thereafter on 24.10.2007.

The trial court rightly disbelieved the case of the accused, since the receipt was not given to the defacto complainant for the money received.

11. The learned Senior counsel as rebuttal to his contention, referring the evidence of P.W.6, submitted the receipts to be issued by Joint Registrar Grade-I, after collecting the small savings amount from the public. Receipts never issued immediately after collecting the money. The learned Senior Counsel also refers the testimony of P.W.2 which say that even before he could collect the receipt, the police/trapping officer along with his team has come and caught the accused/appellant. Hence submitted the trial court judgment is liable to be set aside for want of proof beyond doubt.

12. Heard, the counsels and records perused.

13. The case where the trap though ended successfully, the defacto complainant who has set the law in to motion has turned hostile. The case of the prosecution is that the documents presented for registration on 16.10.2007 along with the requisite fee of Rs.555/- dated 16.10.2007 was registered on the same day and certificate of registration of society duly

signed by the Registrar of Societies on 16.10.2007 was with the accused till 24.10.2007 and recovered from him during the trap proceedings. The accused does the receipt of Rs.300/- from PW.2 and keeping it in his Pant pocket. His explanation been put as suggestion in the cross examination of P.W.4, P.W.5 and P.W.6 along with the Ex.D.1 to D3. These are to the effect that this money was received by him for the small saving collection. P.W.4 Kaliaperumal, who is the District Registrar of the Societies, Cuddulore had spoken about the Ex.D1 to D3.

14. A perusal of the defence documents indicates that a meeting was held at the District Collecotrate, Cuddalore to review the small saving target. The proceedings dated 13.04.2007 indicates that it has been resolved to fix previous year target as target for the year 2007-08. Subsequently, P.W.4 the District Registrar has issued proceedings dated 24.04.2007 fixing Rs.2.60 lakhs as target for the Joint Registrar Grade-II. The total target for the District Registrar Office, Cuddalore, been fixed as Rs.15 lakhs vide proceedings dated 27.04.2007 issued by the District Collector.

15. On perusal of these three documents, this court find no closure date fixed for achieving the target. Though as pointed out by the trial court that on receipt of the money, accused has not given receipt, his explanation through P.W.6 cross examination not been controverted by the prosecution. Mere recovery of tainted money may not be sufficient to draw the presumption under Section 20 of Prevention of Corruption Act. The demand of illegal gratification is a foundational fact which the prosecution has to prove beyond doubt. The defacto-complainant alone has spoken about the demand of illegal gratification in his complaint Ex.B2 and he has turned hostile. The shadow witness though deposed that he saw the accused demanding money and also the receipt of it, what for he demanded the money is not explained. In the absence of specific allegation and proof that the said money was demanded as illegal gratification for registration of a document, the explanation provided by the accused with the documentary evidence as well as ocular evidence of the prosecution witnesses has to be considered as possible explanation.

16. Therefore, this court is of the view that the appellant who had given a possible explanation for receiving the money and that being supported by oral evidence of P.W.4, P.W.5 & P.W.6, the benefit of doubt has to be extended to the accused.

17. The Trial Court reasoning for not accepting the explanation offered by the accused but giving predominance to the presumption clause under Section 20 of Prevention of Corruption Act is improper. The statute only expects possible and reasonable explanation to discharge the reverse burden. Proof beyond doubt is not excepted to discharge the presumption under Section 20 of Prevention of Corruption Act. The prosecution having failed to prove beyond doubt that the money recovered from the accused is illegal gratification and he demanded and accepted the conviction cannot sustain purely on presumption. Further, the defacto complainant who set the law in motion has failed to substantiate his complaint. This makes the prosecution case week. Hence, the Criminal Appeal is allowed.

18. For the above said reasons, the Judgment of conviction, dated 26.08.2015 made in S.C.No.05 of 2008 on the file of the Special

Judge/Chief Judicial Magistrate, Cuddalore-District is hereby set aside. The fine amount paid by the appellant, if any, shall be returned to the appellant. Bail bond executed by the appellant, if any, shall stand discharged.

12.09.2023

Index : Yes/No
Neutral Citation : Yes/No

Vv/mac

To

1. The Special Judge/Chief Judicial Magistrate, Cuddalore-District, Cuddalore

2. The Inspector of Police
Vigilance and AntiCorruption
Cuddalore District

3. The The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN,J.

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