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Crl.A.No.586 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2023

CORAM :

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

Crl.A. No.586 of 2015

The State rep. by
The Public Prosecutor,
High Court, Madras.
[V & A.C., Salem
Cr.No.12/AC/2003]

.. Appellant

Vs.

Rajendran

..Respondent

PRAYER : Criminal Appeal has been filed under Section 378 of Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused passed in Spl.C.C.No.27/2014 dated 29.04.2015 by the Court of the Special Judge, [Special Court for Trial of cases under the Prevention of corruption Act] Salem and convict the respondent/accused for the charges framed against him in accordance with law.

For Petitioner : Mr.S.Udhayakumar
Govt.Advocate (Crl.Side)

For Respondent :Mr.N.R.Elango
Senior Counsel
for Mr.M.Ramadass



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ORDER

This appeal is filed by the State being aggrieved by the judgment of acquittal in the case investigated by the Vigilance and Anti-Corruption against the respondent for offences under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

2. The complaint given by one V.Ayyanar, son of Mariammal alleging for transfer of patta in the name of his mother Mariammal, based on the settlement deed executed by him, the VAO demanded bribe of Rs.1,500/- later reduced to Rs.1,000/-. As a consequence, trap was laid by the Vigilance and Anti-Corruption Inspector and Rs.1,000/- was recovered from the respondent/accused on 16.09.2003 at about 11:30 am in the office of the VAO.

3. To prove the charges, prosecution has examined 11 Witnesses (PW.1-PW.11) and marked 21 Exhibits (Ex.P1 to Ex.P21). In defence side accused was examined as (DW.1) and marked 2 Exhibits (Ex.D1 & Ex.D2). The trial Court acquitted the respondent/accused from both the charges holding that the accused has probablised the defence of motive to give a false complaint and the possession of tainted currency of



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Rs.1,000/- being explained by the accused as the money collected for Flag day donation. In the light of the Flag day receipt books recovered from the accused in the course of trap proceeding, his explanation was satisfactory to the trial Court. Hence, the trial Court has observed that the prosecution has failed to prove either directly or circumstantial evidence regarding the demand of illegal gratification by the accused from PW.2. The trial Court has taken into the facts that the mother of the defacto complainant Mariammal has already given an Application on 11.08.2003 for transfer of patta which is marked as Ex.P2 and the same was processed and proceedings for transfer for patta made ready on 22.08.2003 itself. While so, the 2nd Application (Ex.P4) on 25.08.2003 made by Mariammal and the case of the prosecution is that to process the second application, demand of Rs.1,000/- by VAO appears improbable.

4. Present appeal is filed by the State on the ground that the trial Court has failed to note that the prosecution has proved the demand and acceptance of illegal gratification by the accused on 16.09.2003 by letting in direct evidence of PW.2 and PW.3 followed by recovery of tainted currency from the accused by PW.9 under recovery Seizure



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Mahazar marked as Ex.P10 and MO1 series.

5. The learned Government Advocate (Criminal) appearing for the State submitted that the prosecution has proved the guilt of the accused through evidence of PW.2, the defacto complainant who had spoken about the demand of illegal gratification and receipt of the same by the VAO through PW.3 shadow witness, the prosecution has corroborated the demand and receipt of Rs.1,000/- by VAO. The amount which later came to be recovered by PW.9 from the accused pant pocket portion in which tainted currency was kept turned pink when tested with Sodium Carbonate solution, besides the hand fingers of the accused turned pink indicating he had handled the currency smeared with Phenolphthalein and entrusted to PW.2 during the pre-trap proceedings and recording the explanation given by the accused.

6. Regarding the recovery of flag day donation receipts, the learned Government Advocate submits that the receipts were for the month of June 2003. Whereas, the trap was on 16.09.2003 three months thereafter and therefore the explanation given by the accused for possessing Rs.1,000/- received from PW.2 is not plausible.



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7. Learned Senior Counsel appearing for the respondent submitted that the presumption under Section 20 of Prevention of Corruption Act, 1988 is applicable only for Section 7 and not for Section 13(1)(d) of Prevention of Corruption Act, 1988. Whereas, in this case the demand and acceptance which is foundational fact and *sine qua non* for offence under Section 7 not been proved by the prosecution by letting in reliable evidence.

8. Except PW.5 who is the staff in Tahsildar Office and alleged to have received the second Application from PW.4 on 25.08.2003 and recorded in the register neither PW.2, the defacto complainant or PW.4 Mariammal, the applicant had whispered about the first application given for patta transfer on 11.08.2003 and the same was ready on 22.08.2003. While the first application Ex.P2 dated 11.08.2003 was duly processed and proceeded by the Tahsildar on 22.08.2003, there is no necessity to make a second application for the very same purpose that too suppressing the pendency of the earlier application.

9. Further, learned Senior Counsel also submitted that the mere recovery of money from the accused is not sufficient to hold a public



servant guilty under Section 7 or Section 13(1)(d) of Prevention of Corruption Act, 1988. Moreso, when a plausible explanation is given by the accused for receiving the money (Ex.P9 series). The Flag day receipts and explanation given by the accused contemporaneously at the time of trap is a sufficient explanation for the possession of MO.1 series and the trial Court has rightly considered these facts for extending the benefit of doubt to the accused.

10. Learned Senior Counsel also submitted that when two views are possible and the view taken by the trial Court does not suffer any infirmity or illegality or perversity, the order of acquittal may not be reversed because an alternate view also possible.

11. This Court has given anxious consideration to the rival submissions and the records, findings of the trial Court. On due consideration of evidence, the trial Court has acquitted the accused though he was proved to be in possession of the tainted currency of Rs.1,000/-. This Court on examining the deposition of witnesses and the documents relied by the prosecution finds that the application given in the name of Mariammal marked as Ex.P2 dated 11.08.2003 had been



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duly processed and proceedings for transfer of patta was passed by the Zonal Deputy Tahsildar, Salem on 22.08.2003. While so, the demand of illegal gratification of Rs.1,000/- for processing the second application for the very same purpose alleged to have been made on 25.08.2023 itself smudged with suspicion.

12. The only explanation found in the entire evidence for receiving the second Application is from PW.5. She had given a vague reasoning that she received Ex.P4 due to lack of memory. The testimony of PW.5 would clearly show that she had been involved in the process of granting of patta in the name of PW.2, based on the application marked as Ex.P.2. She is aware of the fact that Zonal Deputy Tahsildar had passed proceedings on 22.08.2003 itself in Ex.P2 permitting transfer of patta in the name of PW.2 and proceedings copy being handed over to the respondent/accused to serve it on PW.4/the applicant. While so, suppressing the said fact, three days after the proceedings issued transferring patta, PW.5 had entertained second application Ex.P4 and certain entries are made in the Register which apparently seems to be interpolation and not in the sequence.



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13.The malafidness in the prosecution can be easily seen from the manipulation of records and unnecessary second application for transfer of patta when the proceedings has already been passed by the appropriate authority. Further, the explanation given by the accused not been properly explained by the prosecution to satisfy why the explanation is not possible. Therefore, for the said reasons, this Court finds the order of acquittal is sustainable. Therefore, the appeal is dismissed.

08.09.2023

rkp

Internet : Yes/No

Index: Yes/No

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To

- 1.The Special Judge,
[Special Court for Trial of cases under
the Prevention of corruption Act] Salem.
- 2.The Pubic Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN, J.

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