IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.04.2023	Pronounced on:25.04.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.710 of 2015

1.Muthukumar
2.P.Yesudass .. Appellants

/versus/

The State,
Represented by the Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore (Crime No.14/2004/AC/CB) .. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment of conviction and sentence agianst the appellants by the judgment dated 28.10.2015 in Special C.C.No.11 of 2011 on the file of the learned Special Judge for cases under Prevention of Corruption Act, Coimbatore and acquit the appellants of all charges and allow the appeal as prayed for.

For Appellants :Mr.R.Rajarathinam
Senior Counsel for
Mr.A.Ramkumar

For Respondent :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

JUDGMENT

The appellants are accused 1 and 3 in Special C.C.No.11 of 2011 on the file of the Special Court for cases under Prevention of Corruption Act at Coimbatore.

2. The case of the prosecution:

PW-1 [Mr.Maduraiveeran]the Proprietor of Sri Ganapathy Timber Mart at Madukarai Road, Sundrapuram, Coimbatore purchased 55 teak wooden logs worth Rs.1,65,461/- from one Nazar (PW-7) of Kerala and transported it to Coimbatore through lorry bearing registration No:KLG 9030. On 08/11/2004, at about 1.30 pm, while he was unloading the wooden logs engaging kalasi's, the Forester Muthukumar (A-1), Forester Venkatesan (A-2) and Forester, Yesudass (A-3) in the Forest Department Jeep bearing Registration No: TN 38 G 0382 driven by its Driver Marimuthu (A-4), came to his timber depot and enquired the lorry driver about the source of the timber and asked the Kalasi’s to stop unloading. They asked PW-1 to produce the permit issued by Forest Department and Invoice. All the four accused verified the permits and invoice and said that the documents are not satisfactory and asked Kalasi's to bring the lorry with timber load to the Forest Range Office. When PW-1 asked them, why should he give bribe, when he possess valid document to transport the timber, all the four accused demanded Rs.5000/- as bribe, if he wants them to drop action. When PW-1 told them that he is not having that much money and requested to reduce the demand, they reduced their demand to Rs.2000/-. PW-1 asked them to come on the next day i.e 09/11/2004 at 9.00 a.m to collect the money. Then they permitted to unload the logs and returned in the jeep.

3. On 09/11/2004 at 12.00 noon, the driver Marimuthu(A-4) called PW-1 over phone and enquired whether he has made ready the money demanded. PW-1 assured him that he will give the money by 5.00 p.m and they can come and collect. PW-1 who had in his possession all the necessary permits and bills was not inclined to give bribe. Hence, he went to the office of Vigilance and Anti-corruption at Coimbatore at 3.00 p.m and gave a written complaint about the demand of illegal gratification by the 3 foresters and 1 driver of the Forest Department.

4. PW-10 [Mr.Selvaraj], the Inspector of Police, DV & AC, Coimbatore received the complaint and registered FIR in Crime No.14/2004 under Section 7 of the Prevention of Corruption Act, 1988. Two officials by name Bakthavachalam (PW-2) and Kandasamy, both working as Revenue Inspectors were asked to be witnesses to the trap proceedings. In their presence, pre trap proceedings and entrustment of phenolphthalein smeared currency to PW-1 was completed at about 3.55p.m. The trap team left to the Ganapathy Timber Depot. While PW-1 and PW-2 went inside the depot, PW-10 the trap laying officer and the other shadow witness Kandasamy stayed outside the depot. The accused A-1 to A-4 came in the Jeep and parked it near the depot. A-1 to A-3 went inside the depot, while A-4 the driver parked the jeep and stayed in the Jeep. A-1 demanded money and PW-1 took out the four 500 rupees notes (M.O-3) smeared with phenolphthalein and gave it to A-1. After requesting A-1 to A-3 to stay for tea, PW-1 came out and gave the pre agreed signal to the trap team waiting outside. On the arrival of the trap team, PW-1 identified the accused and told A-1 had received the money. Then all the three accused were asked to dip their hands in the sodium carbonate solution kept separately in tumblers. Both the right hand and

left hand dip of A-1 in the solution changed the colourless solution into pink colour. The rest of the accused A-2 to A-4 when dipped their hands, the solution colour remained unchanged. Samples of the hand wash was collected for lab test and labelled. When PW-10 enquired A-1 about the bribe money received from PW-1, the first accused took out Rs.2000/- from his shirt pocket. PW-10 requested the shadow witnesses to verify the number found in the currencies (M.O-3) recovered from A-1 with the numbers noted in the entrustment mahazar Ex.P-3. The numbers tallied. A-1 confessed that he received the said money as bribe and later, all the four accused will share it. Later, the shirt of A-1 was removed and the pocket portion of the shirt dipped in the sodium carbonate solution and found the colour changed.

5. The solution collected in separate bottles were sent for chemical analysis and the report confirmed the presence of phenolphthalein and sodium carbonate in the hand dipped and shirt dipped solutions collected from A-1. The report of the Scientific Officer Nandagopal marked as Ex.P-16.

6. PW-3 Mr.Sevesingh gave sanction (Ex.P-9) to prosecute A-1 for offence under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. For abetting A-1 to demand and received illegal gratification, accorded sanction to prosecute A-2 to A-4 under Section 12 of the Prevention of Corruption Act, 1988.

7. The trial Court framed charges against A-1 to A-4 under Section 7 of the Prevention of Corruption Act, 1988 and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and against A-2 to A-4 for abetting A-1, charged them under Section 12 of the Prevention of Corruption Act, 1988.

8. To prove the charges, the prosecution examined 11 witnesses. Marked 16 exhibits and 21 M.O's. A-1 took a defence that he was a customer to the accused. Few month prior to the trap, he advanced money to PW-1 for purchase of timber to make furniture. PW-1 did not supply timber and to return the money, he persistently demanding the refund. On the day of trap at 9.30 a.m when he met PW-1 and demanded return of the money, PW-1 asked him to come to his depot that evening and collect the

money. At that time, one Devendran a common friend was also present. To sustain his defence the said Devendran was examined as DW-1.

9. Pending trial the second accused Venkatesan died. The trial Court on appreciating the evidence, held A-1 and A-3 are guilty of offence punishable under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and sentenced them to undergo 1 year SI and fine of Rs.1000/- in default, 1 month SI for each of the charges. Though held charge under Section 12 against A-3 proved, no separate sentence imposed on A-3 for the said offence. The charge against the driver of the jeep Mr.Marimuthu(A-4) held not proved and was acquitted.

10. The convicted A-1 (Muthukumar) and A-3 (Yesudass) are before this Court as appellants 1 and 2 respectively.

11. <u>Submission on behalf of the appellant:</u>

Mr. R.Rajarathinam, the learned Senior Counsel for the appellants submitted that the prosecution is liable to be vitiated for want of proper sanction to prosecute. The trial court erred in not properly appreciating the contradiction and embellishment of the prosecution witnesses which has been elicited through the cross examination of the Investigating Officer. The explanation given by the appellants for receipt of Rs.2000/- from PW1 not believed by the learned Special Judge, though it is more reliable and probable explanation which is sufficient to rebut the burden of presumption pitted against the accused. Through DW1, the appellant Muthukumar had proved that he was a customer to PW1 and the advance made to purchase timber from PW1 was received back by him on 09/11/2004 from PW-1. On that day, in the morning at about 9.30 a.m., when A-1 met PW-1, he asked the accused to come to his depot collect the money. So, the appellant visited the Depot of the complainant and collected the same from him. In the absence of charge for offence under Section 7 of the Prevention of Corruption Act, 1988 and in the absence of proof for demand of illegal gratification, there cannot be a presumption of obtainment of illegal gratification.

12. The contradiction between the evidence of PW1 and PW4, not been properly appreciated by the trial Court. While PW-1 the defacto complainant had deposed that A-1 alone received the bribe money of

Rs.2000/- marked as M.O 3. Whereas PW-4 a labourer under the employment of PW-1 had deposed that all the four persons together obtained Rs.2000/- from his owner.

13. According to the PW-1, on 9/11/2004, the driver A-4 called him over phone and enquired whether the money is made ready and he told A-4 that the money will be ready by evening 5.00 p.m. Then, he decided to give the complaint to the Vigilance and Anti-Corruption and went to the Vigilance office at 3.00 p.m and gave the complaint.

14. PW-10 had deposed that he received the complaint at 3.00 p.m. Registered the FIR and thereafter, procured two officials to be witnesses for trap. PW-2 [Bakthavatchaalam] who is one of the shadow witness had deposed that he reached the DV& AC office at 3.50 p.m and the entrustment mahazar was prepared after conducting the demonstration of phenolphthalein – sodium carbonate Test. The said pre trap proceeding concluded at 16.45 hrs as per Ex P-4 the entrustment mahazar. Thereafter they left the office at 17.15 hrs and proceeded to the work place of PW1. They reached the scene at 17.32 hrs. The time mentioned in the documents

and proceedings mentioned in these documents clearly indicate that they are concocted documents and highly unbelievable. The haste show by the trap laying officer to conduct the trap without making any preliminary enquiry show that the trap team to show success had framed the accused under the offences under the Prevention of Corruption Act, 1988.

15.The learned Senior Counsel for the appellants further submitted that proof of demand is *sine qua non* to make out a case under Section 7 of the Prevention of Corruption Act, 1988. PW-3 the sanctioning authority in his proceedings granting sanction to prosecute had granted sanction only to prosecute offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 as against A-1 to A4 and not for offence under Section 7 of the Prevention of Corruption Act, 1988. Without sanction the appellants were tried for offence under Section 7 of the Prevention of Corruption Act, 1988 and also convicted. Hence, the conviction gets vitiated.

16. In this case, there is no material to show that within the period of two hours from the receipt of the complaint and the trap, the credential

of the complainant and the complaint verified and found satisfactory. While the demand of illegal gratification alleged to have been made on 08/11/2004, the complaint is given only on the next day at 3.00 p.m. Neither the complainant nor the police/the respondent had explained why there was delay in lodging the complaint and the haste in proceeding for trap soon after registering the FIR. The reason for acquitting A-4 squarely applies to A-1 and A-3 also. The trial Court has used two different yardstick for similarly placed persons.

17. The Learned Senior Counsel for the appellants submitted that if the case of the prosecution is genuine, there could not have been a sketch prepared on 08/11/2004, a day prior to the complaint. The date found in the sketch marked as Ex.P-14 indicates that the respondent police had decided to maliciously prosecute the appellants and started preparing documents from 08/11/2004 onwards, even before the receipt of the complaint. On the face of Ex.P-14, it is to be understood that true facts are suppressed. Material evidence proves that the prosecution on 08/11/2004 itself gone to the premises of PW-1 and prepared EX P-14. Then obtained the complaint on 09/11/2004 from PW-1 at 3.00 pm and created other

records to fix the accused.

18. Submission on behalf of the State:-

Per contra, the Learned Government Advocate(Crl.Side) for the State submitted that Ex.P10 is the invoice in the name of PW1 in respect of teak wood logs, which was transported from Kerala to Coimbatore. The said invoice is dated 07/11/2004. The goods reached Coimbatore on 08/11/2004 in a lorry and the same is proved through PW-8 the Assistant Commercial Tax Officer in the Commercial Tax Department, who saw the vehicle with registration No.KL G 9030 loaded with teak wood timber passed through the check post on 08/11/2004 at 7.20 a.m. The timber was accompanied with delivery note marked at Ex.P11 and invoice Ex.P10. The timber logs, which was brought by PW1 for business with valid permit and invoice, was suspected by the Foresters. They first prevented PW-1 from unloading. Then, for permitting PW-1 to unload the logs, they made demand of illegal gratification. PW1, who had all the permits and bills was not inclined to pay any bribe, hence, informed about the demand of illegal gratification by the Forest Officials and the same been taken on file for investigation.

19. Pursuant to the registration of the complaint under Section 7 of the Prevention of Corruption Act, 1988, the trap was laid. Two shadow witnesses for the trap proceedings were secured and the trap ended successfully on the recovery of the tainted money from A-1 the first appellant herein. It is incorrect to contend that it is impossible to arrange a trap proceedings within two hours. Considering the gravity of the information, the trap laying officer has acted swiftly. His alacrity in pursuing the complaint cannot be termed as hasty action and faulted.

20. As far as A1 and A3, the appellants herein are concerned, the first accused admits the receipt of the tainted money from PW1 but had given an explanation that the said money was given by PW1 as a refund of money advance earlier for purchase of timber for making furniture. In support of this defence, A-1 examined as DW1, who had deposed that on 09/11/2004 in the morning at Lawley Road Forest Range office the first accused and PW1 were talking. He joined with them and saw and heard the first accused demanding the balance amount of Rs.2000/- from PW1 and PW1 assuring that he will give back the money when the first accused come to the timber mart that evening.

21. The learned Government Advocate (Crl.Side) for the State, submitted that if it was a private transaction between the first accused and the de facto complainant, no need to take the office jeep accompanied by two foresters to the PW1's timber depot. The trial Court had properly appreciated the evidence and has held, A-1and A-3 are guilty of receiving illegal gratification. Since there was no incriminating material against A-4, he was acquitted. The learned Government Advocate(Crl.Side) submitted that the conviction and sentence against the appellants passed in Spl.C.C. No.11/2011 has to be confirmed.

22. The point for consideration is whether the evidence relied by the prosecution attracts the offence under the Prevention of Corruption Act, 1988 and if so, whether Ex P-9 the sanction to prosecute the appellants is valid to sustain the prosecution and conviction.

23. After narrating the background facts, PW-3 the sanctioning authority under Section 19(1)(c) of the Prevention of Corruption Act, 1988 had issued the proceedings dated 30/06/2006. In the said proceedings, he had stated that on considering the material placed, he is

satisfied that the accused A-1 to A-4 are to be prosecuted for the offences in a Court of law. He has recorded the registration of case under Section 7 of the Prevention of Corruption Act, 1988 before trap and the obtainment of bribe of Rs.2000/- by A-1 which constitutes offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The perusal of the sanction order reflects the application of mind and sanction to prosecute for the offence of demand and obtainment of illegal gratification as reward or motive to permit PW-1 unload the teak wood logs at his Ganapathy Timber Mart. In the cross examination of PW-3, he has spelt out his satisfaction to accord sanction and the documents he perused for according sanction. Hence there is no infirmity in the sanction order Ex.P-9.

24. It is contended by the learned counsel for the appellants that trial Court failed to consider the evidence of DW-1 and the explanation given by the A-1 for obtaining M.O.3 Rs.2000/- from PW-1 on 09/11/2004 at the depot of PW-1.

25. On perusing the testimony of DW-1, this Court finds that DW-1 is a mason by profession. He admits that he know A-1, since he used to carry out the work for Forest Department. He also knows PW-1 since he used to recommend customers to buy timber from the shop of PW-1 and for which he used to get commission from PW-1. On 09/11/2004, while on the way to meet his friend Theerthagiri at about 9.30a.m, he saw A-1 and PW-1 near Forest Department Regular office gate. He stopped and joined them. At that time, A-1 was demanding back the balance money, he advanced to PW-1 to supply timber. PW-1 promised to pay it that evening at 5.00 p.m. He stayed with them for some time and proceeded to Kanthalai Division to meet his friend. Later, he came to know that A-1 was arrested by Vigilance police for taking bribe.

26. The oral evidence of DW-1 is based on the alleged conversation between PW-1 and A-1 regarding previous transaction, which he heard on his way to meet his friend. No other evidence produced by A-1 to show there was a previous money transaction between him and PW-1 regarding purchase of timber from PW-1. Even if a previous transaction to be presumed, for collecting the money arising out of his private transaction,

meeting PW-1 with other foresters working with him in the official jeep does not appeal to reasoning. Neither A-1 nor A-2 to A-4 had given plausible reason for accompanying A-1 on 09/11/2004 and being present with him in the premises of PW-1, when the trap team came on receiving the signal from PW-1.

27. While the evidence for prosecution is cogent to the allegation of demand and acceptance of illegal gratification, the explanation put forth through DW-1 stand alone without corroboration and the testimony of DW-1 is not a proof for previous transaction between PW-1 and A-1, but at the most, it could be a hearsay of previous transaction.

28. The prosecution through PW-4 and PW-5 employees of PW-1 has proved that on 08/11/2004 teak wood logs came to the premises of PW-1 and they were engaged in unloading it. Ex.P-10 invoice and Ex.P-11 delivery note vouchsafe their testimony besides the evidence of Ibrahim PW-6, who accompanied the logs in the lorry and Nazaar PW-7, the supplier of the wooden logs corroborates the fact that the wooden logs were transported from Kerala and reached the PW-1 depot on 08/11/2004

and while unloading A-1 to A-4 came for inspection and sought for permit and invoice for the goods. Further, the demand of bribe Rs.5000/- and reducing it to Rs.2000/- also corroborated by PW-4 to PW-6, who were eye witnesses to the demand. Thus, the foundational fact of demand of illegal gratification for permitting PW-1 to unload the logs well proved through these witnesses and exhibits.

29. In respect of obtainment, A-1 admits the acceptance and given explanation for the acceptance. The said explanation spoken through DW-1 and elicited through cross examination of PW-1 is found not a plausible explanation. It is contended by the Learned Senior counsel on behalf of the first appellant that, bills and receipts for the old transaction cannot be expected to be preserved and the amount being only Rs.2000/-, the trial Court ought not to have declined to accept the explanation for want of receipt and bills.

30. The said submission would have certainly convinced this Court had A-1 gone alone to collect the money or there is no eye witnesses for the earlier demand made on 08/11/2004 collectively by A-1 to A-4. The

trial Court no doubt acquitted A-4, since he was in the jeep and not entered the premises of PW-1 on 09/11/2004, when the bribe obtained by A-1. This fact differentiate the case of A-4 from the case of others. Therefore, no parity can be drawn between these two classes of accused.

31. As a result, **this Criminal Appeal is dismissed**. The judgement of conviction and sentence passed by the Special Judge, Special Court for Cases under Prevention and Corruption Act, Coimbatore made in Spl.C.C.No.11 of 2011 dated 28/10/2015 is hereby confirmed. Bail bond executed by the appellants, shall stand cancelled. The trial Court is directed to secure the accused and commit them to the prison to undergo the remaining period of sentence.

25.04.2023

Index:yes/no
Speaking order/non speaking order
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To

The Special Court for Cases under the Prevention of Corruption Act,
Coimbatore.

Dr.G.JAYACHANDRAN, J.

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delivery Judgment made in
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