IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2023

Pronounced on : 24.03.2023

CORAM

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

Criminal Appeal No.795 of 2015

E.Vijayan ... Appellant/Accused

/versus/

State of Tamil Nady rep. by
The Inspector of Police,
Vigilance and Anti-corruption
Salem.
Cr.No.8/AC/2011 ... Respondent / Complainant

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C., praying to call for the records relating to the proceedings in Spl.C.C.No.69 of 2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem in Spl.C.C.No.69 of 2014 and set aside the order of conviction dated 15.12.2015 and the set the appellant at liberty.

For Appellant : Mr.M.Devaraj and
Mr.M.Nallathambi-Legal aid counsel

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

JUDGMENT

The appellant herein is a bill collector in Salem Corporation, who was found guilty of demand and acceptance of bribe of Rs.1,000/- from one Sagadevan to permit him to carry on business of selling Ragi porridge in his push cart in and around Salem new bus stand. Pursuant to the demands made on 08.07.2011, 09.07.2011 and 11.07.2011, the said Sagadevn has given tainted money of Rs.1,000/- to the appellant/accused on 12.07.2011 and was accepted by the appellant. However, before offering the bribe money, the said Sagadeven has gone to the Vigilance office and gave an oral complaint to the Inspector of Vigilance and Anti corruption at Salem. His oral statement has been reduced into writing by one constable K.Saravanan and the written complaint registered in Crime No.8/AC/2001 for investigation by the Inspector of Police Mr.Natarajan.

2 After registering the F.I.R., the Investigating Officer has arranged trap for the accused Vijayan, while receiving money. Hence he called two officials from TANGEDCO to be the shadow witnesses for the trap operation. After conducting demonstration regarding consequence of phenolphthalein and Sodium Carbonate test, the 10 hundred rupees note brought by the *de facto* complainant smeared with phenolphthalein and entrusted to the *de facto* complainant, Sagadevan. Entrustment Mahazar was prepared in the presence of the witnesses and thereafter the trap team along with shadow witnesses and the *de facto* complainant proceeded to the Motor Pump Room maintained by the Corporation at the new bus stand, Salem. Sagadevan, the *de facto* complainant, and Mr.Murugavel one of the shadow witnesses waited at the motor pump room from 12.30 p.m., for the accused since the room was found locked. The accused came there by 1.45 p.m., opened the lock went to the room and called the *de facto* complainant. He received Rs.1,000/- from Sagadevan and assured herein after the *de facto* complainant can run his business. He counted the money and kept it in his left side pant pocket.

3 The *de facto* complainant and the shadow witness came out from the room and gave the pre-arranged signal to the waiting trap team. The trap team thereafter entered the motor room. To know presence of phenolphthalein, Sodium Carbonate, solution was prepared and the accused was asked to dip his left hand and right hand in the solution prepared separately, since it turned light red, the sample was collected and each bottle, sealed and labelled. Alternate pant was given to the accused and the left side pocket portion was dipped in the Sodium Carbonate solution. Since it turned light red, the pant wash solution was collected in a bottle and the same was sealed and labelled.

4 From his right side pant pocket, the accused took Rs.18,400/- along with the slip containing shop numbers and the rent collected. On enquiry, the accused said that the said money was collection of the rent and it is supposed to be remitted in the Corporation.

5 The Trap Laying Officer called over phone to the Assistant Revenue Inspector, Vasanth Kumar of Salem Corporation to come to the spot and through his it was confirmed that the said Rs.18,400/- is the rent collected by the accused on behalf of the Corporation as per the accompanying slip. From the shirt pocket of the accused, Rs.3,500/- was recovered and stated to be his personal money. Another sum of Rs.350/- that was kept by the accused along with Rs.3,500/- was the collection from the pay and use toilet. Accepting the explanation of the accused that Rs.350/- is collected from pay and use toilet and Rs.3,500/- is his personal money, the Trap Laying Officer gave back Rs.18,400/- and Rs.350/-

received from the accused to Vasantha Kumar, the Assistant Revenue Inspector for remittance at the Corporation Treasury. Thereafter, the accused was arrested. The hand wash solution sent for chemical analysis through the Court. Report received from the chemical analysis confirmed the presence of both Sodium Carbonate and phenolphthalein. Based on the Final Report, charge under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act was issued and the accused was tried.

6 Based on the evidence let in by the prosecution namely 12 witnesses 20 exhibits and 5 M.Os, the accused was convicted and sentenced to undergo one year R.I., and fine of Rs.5,000/-, in default 3 months S.I., in respect of Section 7 of P.C.Act and 2 years R.I, Rs.10,000/- fine, in default 6 months S.I., in respect of offence under Section 13(2) r/w. 13(1)(d) of P.C.Act.

7 Having aggrieved, the present Criminal Appeal is filed on the ground that PW.2 the *de facto* complainant, Sagadevan turned hostile and not supported the case of the prosecution. PW.3, the shadow witness Murugavel and PW.4, another shadow witness Palanivelan had not placed any record to show that their superior officer permitted them to be the shadow witnesses for the trap proceedings. Their contradiction in the testimony regarding the entrustment of the tainted money with PW.2, who turned hostile and the recovery of the money from the accused under the Recovery Mahazar give raise to a doubt whether they were present at the scene of occurrence on the date of trap.

7 The learned counsel appearing for the appellant submitted that the trail Court failed to appreciate the fact that the currency smeared with phenolphthalein was left on the table of the accused by PW.2 and he left the room, the accused who is incharge of collection of rent from the shop owners and establishments within the Salem Corporation limit, was not sure for what the money has been left by the said Sagadevan. Before he could realise, the trap team came and without considering the explanation given by him, arrested him suspecting demand and acceptance of illegal gratification.

9 The uncorroborated testimony of PW.3, the shadow witness who has spoken about the demand and acceptance of the tainted money on the day of trap i.e., 12.07.2011 is highly doubtful. More particularly, when the witnesses have consistently said that the hand wash solution and the pant wash solution collected from the accused was sealed and labelled and in the label the accused has signed, it is admitted by the witnesses to the prosecution PW.3 and PW.4 that in the bottle marked as M.O.4. The bottle containing the remanent solution of pant wash of the accused marked as M.O.4 though labelled, it is admitted by the witnesses that the signature of the accused is not found in it. Therefore, the contention of the prosecution that the phenolphthalein smeared currency was received by the accused and kept in his left side pocket is highly doubtful, when the accused has taken a defence that PW.2 came to his room and kept the money in the table and left, soon thereafter, the trap team came and recovered the money.

10 The learned counsel has also pointed out that PW.3 and PW.4 both shadow witnesses and PW.11, the Trap Laying Officer had consistently spoken that on seeing the vigilance police and his team, the accused got perplexed and got nervous. Then the Trap Laying Officer held him and pacified him, made him to sit in the chair. The Trial Court failed to consider that while pacifying the perplex accused, the Trap Laying Officer has bodily contacted him and made him to sit in the chair. In the said course, there is every possibility of transferring the phenolphthalein powder from Trap Laying Officer hand to the accused hand, which might have been the reason for the sodium carbonate solution prepared at the motor pump room, Salem and tested by dipping the hands of the accused being turned into light red colour.

11 The learned counsel for the appellant submitted that it is the consistent case of the prosecution that the motor pump room at the bus stand was used by the accused to stay and collect the rent from the shops in and around bus stand the accused by the order of his Superior been by the roster, ordered to collect rent from the shops in and around new bus stand and other areas. This order of the Corporation, Assistant Commissioner dated 30.10.2007 and 03.11.2006 are marked as Ex.P8 and Ex.P9. Apart from the tainted money of Rs.1,000/- admittedly the accused had in his possession a sum of Rs.350/- being the money collected from the pay and use toilet and Rs.18,400/- being the rent collection from the shop owners. The slip containing the details of the shop owners who have paid the rent has not been produced before this Court, though it is admitted that the said money that has been recovered from the accused and he had kept account for them in the slip.

12 The learned counsel for the appellant further submitted that the prosecution case is that the accused demanded Rs.1,000/- from PW.2 to run Ragi porridge business in the push cart not been proved by the prosecution. PW.2 who had given a complaint marked as Ex.P.2, but he turned hostile. PW.3 who accompanied PW.2 according to prosecution when the accused obtained Rs.1,000/- from PW.2. PW.3 had deposed that when he and the *de facto* complainant entered the room of the accused, the *de facto* complainant sought permission to sell Ragi porridge for which the accused enquired whether he has brought the money he demanded. Only if he gets money, he will permit the said Sagadevan to sell Ragi porridge, thereafter, the *de facto* complainant drew the money from his left side shirt pocket and gave it to the accused.

13 The prosecution has not placed any evidence to show that Sagadevan was carrying on business of selling porridge in push cart. Therefore, when the alleged demand itself is doubtful and not been corroborated and more particularly when the *de facto* complainant himself has turned hostile. The Trial Court erred in holding that Rs.1,000/- recovered from the accused is the bribe money demanded and accepted by him to permit PW.2 to run his business in push cart. From the prosecution witness, it is clear that the accused had in his possession the collection of rent and apart from the Rs.1,000/- he had Rs.18,400/- in his left side pocket along with slip containing the details about the shop owners and the rent paid by them and in his front shirt pocket he had 35 notes of 10 rupees currency in one bundle and 4x500 rupees note and 15x100 in another bundle. Rs.350/- containing of 10 rupees denomination was the pay and use toilet collection and Rs.3,500/- was his personal money. The duty of the accused was to collect rent and he has been designated as a bill collector for that purpose. For Rs.1,000/- left on his table by the stranger under the guise of the paying the rent to the Corporation cannot be construed as bribe money demanded and accepted. The prosecution has failed to prove the fundamental facts such as the *de facto* complainant carrying on business in selling Ragi porridge in his push cart and he was carrying on business in and around the bus stand of Salem and to allow him to carry on the business peacefully, the accused demanded bribe of Rs.1,000/- per week.

14 Per contra, the learned Government Advocate (Crl.Side) for the State would submit that the case of the prosecution can be divided into two parts (i) demand of illegal gratification from 08.07.2011 to 12.07.2011 and the demand and acceptance on the day of trap i.e., 12.07.2011. The first part of demand of illegal gratification to permit Sagadevan, the *de facto* complainant to run his Ragi porridge business in his push cart is found in the statement of Sagadevan which culminated in registration of F.I.R. According to this statement, on 08.07.2011 at about 12.00 noon, when he was selling Ragi porridge on the East of the new bus stand, one Lakshmanan, the Tank Operator of Salem Corporation informed him that the bill collector (accused) asked him to meet him in person at his office in the bus stand. Thereafter, Sagadevan has gone and met the accused immediately. At that time, the first demand of illegal gratification came from the accused. He has threatened Sagadevan that he can levy tax on him as he wishes and prevent him from carrying on business. Therefore, to allow him to do business, he must pay Rs.1,000/- as Mamool every week. Sagadevan has expressed his inability to pay such huge amount every week and had returned home. Again on 09.07.2011 at about 1.00 p.m., he has met the accused and tried to negotiate. However, the accused was stick on to his demand and refused to reduce his weekly Mamool of Rs.1,000/-. For the third time on 11.07.2011 he went to the office of the accused located inside the bus stand. The office was found locked. Therefore, he waited for the accused to come. When the accused came, for the third time demanded and told Sagadevan that he will be permitted to do business only when part away Rs.1,000/- per week.

15 Being aggrieved that if bribe is not given to the bill collector viz., Vijayan, he will not permit him to do business in push cart in and around the bus stand, Sagadevan has reported the matter to the vigilance wing on 12.07.2011 at 7.30 a.m.

16 The evidence of PW.2 that the accused sent word through Lakshmanan (PW.5) to meet him regarding permission to run the business in the push cart is corroborated by PW.5, Lakshmanan and therefore even if PW.2 has turned hostile, the evidence that the accused through PW.5 Lakshmanan told PW.2 to meet him is proved beyond doubt. Though the demand of bribe money on 08.07.2011, 09.07.2011 and 11.07.2011 remains uncorroborated, the consequence of the meeting, finally culminated on 12.07.2011 when the phenolphthalein smeared currency recovered from the accused between 13.45 to 15.45 p.m. This money was entrusted to PW.2 on that day in the morning between 10.30 to 11.30 under the Entrustment Mahazar Ex.P4 and the entrustment to PW.2 has been spoken by PW.3 Murugavel PW.4, Palanivelan and PW.11, Natarajan, the Trap Laying Officer. Therefore, the judgment of Hon'ble Supreme Court in ***Neeraj Dutta Vs. State (Government of NCT of Delhi) 2022*** reported in ***2022 SCC Online SC 1924.*** squarely applies to the facts of this appeal.

17 PW.2, the *de facto* complainant though turned hostile subsequently, it does not anyway derail the case of prosecution since the fundamental fact of demand and acceptance has been proved through other witnesses. The testimony of PW.3, who was a shadow witness for the demand and acceptance stands unimpeached and there is no reason to doubt his direct evidence regarding demand and acceptance.

18 Heard the learned counsel for the appellant and the respondent police.

19 The case of the prosecution is that PW.2, Sagadevan is a push cart vendor selling Ragi porridge in Salem in and around new bus stand area used to park his push cart out side the new bus stand and sell Ragi porridge. The accused is the bill collector employed by the Salem Corporation and he has been assigned to collect rent from the shops and establishments located at (1) new bus stand (2) Srinivasa park (3) Chathiram (4) Vandipettai and Vandipettai Main Road (5) Santhaipettai Main Road (6) Pallappatti child welfare school and (7) meat shops. Ex.P9 dated 30.10.2007 is the assignment of area to each of the bill collectors which indicate that the appellant Vijayan has been allotted to collect rent from the shops mentioned in the above six areas. PW.5 Lakshmanan is an unskilled labourer serving in Salem Corporation since 1988 and during the relevant point of time, he was working as a pump operator and was incharge of motor room inside the Salem bus stand. He has deposed that he know the accused who is a bill collector used to come to the motor room and used for his official purpose. One of the keys to the motor room was with him and he had deposed that the accused used that room to collect rent and to prepare demand notices for rent. He has also deposed that he know the *de facto* complainant, Sagadevan who used to sell Ragi porridge in a push cart in and around the bus stand area. On 08.07.2011 at 12 noon, when he came to the motor room, the accused asked him to inform Sagadevan, the *de facto* complainant to come and meet him. After 5 minutes he found Sagadevan selling Ragi porridge in his push cart near Arthi hotel, he conveyed the message to Sagadevan. After 3 days he came to know that the accused was arrested for receiving Rs.1,000/- as bribe from Sagadevan.

20 From his evidence though meeting of the accused and the *de facto* complainant prior to the date of trap has not been spoken, the intention of the accused to meet the *de facto* complainant is well proved. PW.2's visit to the vigilance office at Salem and report about the demand of bribe is established by the prosecution through the statement of Sagadevan given orally and reduced into writing by the constable Saravanan. Sagadevan who was examined as PW.2 has turned hostile, but he has identified his signature found in his statement and Entrustment Mahazar. In his deposition, he admits that he is selling Ragi porridge in push cart out side new bus stand, Salem. Two years before he deposed, that police from vigilance cell came and obtained his signatures in blank papers. Signatures found in the typed statement and Entrustment Mahazar has been identified by him and made by him. PW.6, Nagarathinam the administrative officer of the Salem Corporation had deposed that the accused was entrusted with the responsibility of collecting rent from the shops in and around bus stand and few other areas. He has specifically stated that without his permission if any of the push cart vendors do their business, they will be removed with the help of the police, this indicates that the Corporation staff has the authority to regulate push cart vendors and remove unauthorised vendors with the help of the police.

21 Both PW.5 and PW.6 have deposed that in the scene of occurrence where the trap successfully ended was used by the accused. PW.10, the Assistant Revenue Inspector who has gone to the spot soon after receiving information by the Trap Laying Officer has substantiated the case of the prosecution regarding the events which occurred after the trap. The recovery of personal money, the money collected towards rent and the bribe money are spoken by PW.3 and PW.4, PW.11 is corroborated by PW.10. The hand wash of the accused and the pant wash of the accused seized labelled and sent for analysis through Court is spoken by PW.8 Superintendent of the Court. The receipt of the sample and the test conducted is explained by PW.9, Vishalachi, the Assistant Director, TNFSL. in her report marked as Ex.P14 dated 04.08.2011.

22 At this juncture, it is relevant to note that the label of the pant wash does not contain the signature of the accused and the same is admitted by PW.3 and PW.4. Therefore, there is a reasonable doubt whether the wash sent for analysis was the one which was recovered at the scene of occurrence. While the signature of the accused is found in the labels fixed on the all other material objects seized from him and also in the Seizure Mahazar marked as Ex.P5, in the label of the bottle containing his pant wash, his signature is missing. However, it is not the case of the accused that his signature in the Seizure Mahazar and the labels of M.O were obtained by force or illegally. Even otherwise, there is no explanation for the presence of the phenolphthalein in his hands.

23 In his answer to Section 313 Cr.P.C. questioning, the appellant to an extent admits that the money kept by the PW.2 on the table was taken by him and kept in his right side pocket without knowing what for the money being tendered by PW.2. Though apparently PW.2 has turned hostile to his disadvantage the other circumstantial evidences clearly indicate the guilt of the accused and the money received from PW.2 for illegal gratification. The evidence of PW.5, Lakshmanan clearly establishes the fact that the accused has called PW.2 to his office through PW.5 on 08.07.2011. Thereafter, PW.2 had been visiting the accused office and negotiating for permission to run Ragi porridge business in push cart. Out of Rs.23,250/- found in possession of the accused, the bill collector. He was able to account for Rs.22,250/- and for the remaining Rs.1,000/- his attempt to account for is far from convincing. Therefore, the conclusion of the Trial Court based on the evidence available stands confirmed.

24 Accordingly, this Criminal Appeal is dismissed and the conviction and sentence awarded by the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, in Spl.C.C.No.69 of 2014, vide impugned judgment dated 15.12.2015, are hereby confirmed. It is made clear that the period of incarceration undergone by the appellant / accused during the course of investigation / trial is ordered to be set-off under section 428 Cr.P.C.

24.03.2023

Index : Yes/No
Speaking order/Non-speaking Order
rpl

To,

1.The Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.

2.The Inspector of Police,
Vigilance and Anti-corruption
Salem.

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

Dr.G.JAYACHANDRAN.J.,

rpl

Judgment made in

Criminal Appeal No.795 of 2015

24.03.2023