

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.04.2023

Pronounced on:21.04.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.86 of 2019

S.Chandrasekar
S/o Sivalingam,
Head Constable 713
Uthiramerur Police Station,
Kanchipuram District.

.. Appellant

/versus/

Inspector of Police,
Vigilance and Anti Corruption,
Kanchipuram.

.. Respondent

Prayer : Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellant/accused in Spl.Case No.12/2010 on the file of the learned Special Judge and Chief Judicial Magistrate, Chengalpattu on 30.01.2019 and acquit him from all the charges.

For Appellant :Mr.K.K.Sivashanmugam

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

JUDGMENT

This Criminal Appeal is preferred by the sole accused, who was found guilty by the trial Court for the offence under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. The charge against him was that, he demanded and received Rs.5,000/- as illegal gratification from one Shankar for releasing the two wheeler bearing registration number TN-25-T-4872.

2. As per the evidence of Shankar (PW-2), on 13.12.2008, while he was returning from his field in his Hero Honda two Wheeler bearing Registration No.TN-25-T-4872, stopped at the field of his cousin Pushpanathan (PW-6) and was chatting with him. At that time, four persons in plain cloth came and enquired about them. They in turn questioned them who they are?. Then, they informed that they are policemen from Uthiramerur Police Station and they have come in search of illicit arrack sellers and enquired, whether they have any information about them. P.W.2 and P.W.6 said, they are not aware of any arrack sellers nearby. The Policemen then asked to come to the police station. They both

went in the two wheeler to the police station. At the police station, one of them by name Kamalakannan took them to the Inspector of Police, Kannan, who removed PW-2 (Sankar) Lungi and from the inner wear pocket took away Rs.1300/-. Similar treatment was given to PW-6 (Pushpanathan) and from him Rs.1000/- was taken away. Then, the policemen put them in the lock up room.

3. Hearing the news, the President of the village Mr.Rajendran and Mr.Somasundaram, the brother of Pushpanathan, came to the police station and requested the police to release them. At that time, the policemen demanded Rs.25,000 to release them. The entire night, PW-2 and PW-6 were kept in the police lock up. On the next day on 14/12/2008 at about 6.30 p.m, the president Mr.Rajendran and Mr.Somasundaram came to the station and gave Rs.12,000/- for their release. On receiving the money, the policemen released them, but the two wheeler was retained by them and the Writer of the police station, who is the appellant/accused Mr.Chandrasekar demanded Rs.5000/- to release the two wheeler. He told to pay the money by 16/12/2008 evening and take back the two wheeler. PW-2, who was not interested in giving bribe, consulted an Advocate at

Cheyyur, who advised PW-2 to meet the Director General of Police, Vigilance and also gave the phone number of Kancheepuram Vigilance office. After contacting the Vigilance office over phone, he went to the Vigilance office and reported about the demand of Rs.5000/- by the writer of the Station Mr.Chandrsekar to release the two wheeler. He gave a written complaint Ex.P-2 about the incident and the demand made. Based on the written complaint, the First information report Ex.P-3 was registered by Mr.Kalaiselvam (PW-11) the Inspector of Police, Vigilance and Anti Corruption, Kanchipuram on 16/12/2008 at about 12.00 noon. The FIR copy was forwarded to the Chief Judicial Magistrate, Chenglepet. PW-11, prepared for trap and arranged for two official witnesses by name Mr.Thangavel, Record Clerk, District Educational Office Kanchipuram and Mr.V.Srinivasan Assistant Inspector, Audit and Accounts Office, Kanchipuram. Pretrap proceedings conducted in the presence of witnesses and the phenolphthalein smeared currencies were entrusted to PW-2. The entrustment of the trap money (5 nos x 1000 rupees) and the demonstration of the sodium carbonate – phenolphthalein test were recorded in the mahazar marked as Ex.P-4. The trap team went to Uthiramerur from Kanchipuram. At about 18.05 hrs, PW-2 Shankar along

with the shadow witness Thangavel (PW-3) went to the Uthirammerur Police station and met the accused. When PW-2 requested to return the two wheeler, the accused reiterated his earlier demand of illegal gratification. PW-2 took out the currency kept separately and gave the phenolphthalein smeared Rs.5000/- to the accused. Thereafter, PW-2 and PW-6 came out of the police station. PW-2 gave the pre arranged signal to the members of the trap team waiting outside the police station.

4. The trap team then entered the police station. On being identified by PW-2 and PW-6, Mr.Chandrasekar was asked to dip his hands in the bottle containing sodium carbonate colourless solution. When he dipped his hands, the colour of the solution turned pale red. The solutions were collected in separate bottles, labelled and sealed. The bribe money Rs.5000/- recovered from the accused by the trap team. Seizure mahazar Ex.P-5 prepared and thereafter, the accused was arrested at about 19.30 hours and taken into custody. The seizure of the two wheeler key and the letters of Rajendiran (PW-9) and Somasundran (PW-10) were recovered under mahazar Ex.P-6.

5. On completion of investigation, the final report was filed before the Chief Judicial Magistrate, Chengalpet. Charges under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was framed and tried.

6. To prove the charges, the prosecution examined 13 witnesses marked 18 exhibits and five material objects. the defacto complainant Shankar was examined as PW2. He deposed, as per his previous statement till the pretrap proceedings held at the office of Vigilance and Anti Corruption, Kanchipuram. But He turned turtle, while deposing about the acceptance of the bribe money on the day of trap. He deposed that he went to the Uthiramerur Police Station on 16/02/2008, first met the Inspector and asked for his two wheeler. He instructed to meet the accused. In the hall, he saw 5-6 persons. He kept the tainted money of Rs.5000/- in the pocket of one of them standing there. He is not sure whether the accused was present at that time.

7. At this juncture, the prosecutor has requested to declare this witness hostile, since he did not stick to his complaint and earlier

statement given during the investigation. Thus, PW-2 was declared as a hostile witness for the prosecution. However, the shadow witness Thangavelu (PW-3) who was instructed by the trap laying officer (TLO) to accompany PW2 Shankar to Uthiramerur Police station had deposed demand and acceptance of bribe by the accused. According to PW-3, on 16/12/2008 about 12.00 noon, his Superior officer, the Chief Education Officer Kancheepuram instructed him to meet the Inspector, Vigilance and Anti-Corruption at his office. Accordingly, he went there and he saw one Sreenivasan of Co-operative Department also present in the vigilance office. They met inspector, Kalaivanan and informed about the instruction letter given by his superior officer. Thereafter Kalaivanan Inspector of Police informed about the complaint received from Shankar and requested him to be a shadow witness to the trap. Inspector Kalaivanan demonstrated the significance of Sodium carbonate- phenolphthalein. The 10 numbers of 1000 rupees currencies entrusted to PW-2. By 4:45 PM, he along with the other shadow witness Sreenivasan along with the complainant and trap team left to Uthiramerur police station. He and PW-2 went to the police station and met the accused. The accused enquired PW-2, whether he had brought the money. PW-2 answered in affirmative

and took out Rs.5000 and gave it to the accused. The accused received the money in his right hand and kept inside his left side pant back pocket. Thereafter, he and PW-2 left the room. PW-2 gave the pre arranged signal to the trap team waiting outside the police station. On receipt of the signal, the trap team came inside the police station. PW-2 identified the accused who received the money and told the Trap Laying Officer about the demand and receipt of the money by the accused from PW2. The trap laying officer arranged for phenolphthalein test. Sodium carbonate solution was prepared and the accused was asked to dip his right and left hands separately in the two tumblers containing sodium carbonate solution. The colourless solution on dipping the hands turned pale red. Alternate dress was given to the accused and was asked to remove the pocket for test. When the back pocket portion of the pant dipped in the sodium carbonate solution, the colourless solution turned pink. The solutions were collected in bottles for chemical analysis. They were labelled and sealed.

8. PW4 (Mr.Duraisami), Sub Inspector of police had deposed that on 13.12.2008, when he returned to the station, after completing duty, he

saw the Inspector enquiring two persons in connection with prohibition case. The inspector of police, after enquiring them, instructed Chandrasekar the accused to get a letter from their relatives and leave them. Later, he came to know that the accused had demanded bribe and got caught. PW-5 Kannan, Inspector of Police had spoken about the enquiry conducted by him with Shankar and Pushpanathan, who were brought by the Head Constable Mr.Rajendiran and Grade-I Police Constable, Mr.Kamalakannan to the Police station, on suspicion, on 13/12/2018. The enquiry with him revealed that, Shankar is employed as a daily wager in Electricity Board And Pushpanathan is his relative and they are innocent. Therefore, he instructed Chandrasekar the accused to send them home after getting letter. However Chandrasekar has not released them. This was noticed by him, on the next day at 8.00 am when we came to the station. Then, he enquired Chandrasekar, why he has not sent them, after getting letter. For which, the accused told that their relatives have told that they will come and give the letter, so waiting for them. On 15/12/2018, he was on camp and went on leave. On 16.12.2018 at about 6:00 p.m while he was at station looking after his duty in his seat, Chandrasekar, with his hands up, surrounded by three persons came to

him. Those three persons introduced themselves as Vigilance and Anti Corruption team. Sodium Carbonate – phenolphthalein test was conducted in his presence and he saw the colourless solution turning pink. The solution were collected in in three separate bottles and were labelled and sealed.

9. PW-12 Tmt.Thara Scientific Officer, had deposed that the three bottles, marked as 'R' , 'L' and 'P' the collection from the right hand, left hand and pant wash respectively, were tested and found that, all the three Solutions contain phenolphthalein and sodium carbonate. The report of the Scientific Officer is marked as Ex.P-18. Pushpanathan (PW-6) who is the cousin of the de facto complainant Sankar(PW-2) , had deposed about the incident happened on 13/12/2018 and the detention at the police station that night on suspicion. He has alleged that Kamalakannan, Head Constable (PW-8) took away Rs.1300/- from PW-2 and Rs.1000/- from (PW-6). On the next day, PW-9 and PW-10 came to the station and along with them he returned home. He is not aware what happened thereafter. He did not support the case of the prosecution in respect of the trap event, hence treated as hostile witness.

10. PW7 (Mr.Rajendran), the Special Sub Inspector of Police of Uthiramerur Police Station and PW-8 (Kamalakannan) Head Constable of Police, had deposed to the effect that on 13/12/2018, the team constituted for prohibition raid, secured Shankar and Pushpanathan and brought to the station. After enquiry, they were handed over to the accused, who was the writer in the station and the Inspector instructed the accused to sent them home after getting a letter. However, they were not sent home. The respondent police arrested the accused on 16/12/2018. The President of the village Mr.Rajendran was examined as PW-9 had deposed that on hearing the news that Police had taken Shankar (PW-2) and Pushpanathan (PW-6) to the police station, suspecting them for their involvement in prohibition offence, he along with Somadundaram (PW-10) went to the police station and asked the police to release PW-2 and PW-6. The Inspector of police demanded to do something for the station and take them home. Since he did not have money in his hand, he arranged Rs.5000/- from the villagers and went back to the police station. When he gave Rs.5000/- they said it is not sufficient and told to bring more money and take the back the two wheeler. For the present, take PW-2 and PW-6

home, after giving a letter. So, he gave the letter Ex.P-12 and brought home PW-2 and PW-6. The testimony of PW-9 as well as PW-10 Somasundaram were not in support of the prosecution version and therefore, they both were treated as hostile witnesses.

11. On holistic appreciation of the evidence capsulised as above, the trial Court concluded that the prosecution has proved that the accused has made an illegal demand of Rs.5000 to release the two wheeler of the de facto, complainant Shankar (PW-2).

12. Though the defect the complainant and his cousin Pushpanathan beside the Village President Rajendiran (PW-9) and Somasundaram (PW-10) turned hostile, the trial Court held that the evidence available sufficient to prove the factum of demand and receipt of illegal gratification of Rs.5000/- by the accused on 16/12/2018 for the release of the two wheeler and convicted the accused to undergo three years Simple Imprisonment(SI) and to pay fine of Rs.5000/ in default, to undergo 6 months SI, each for offences under Section 7 and 13(1)(d) of Prevention of Corruption Act, 1988. The period of sentence imposed for each offence

were ordered to run concurrently and the period of imprisonment undergone was ordered to be set off. The above conviction and sentence is under challenge in this appeal.

13. According to the learned Counsel appearing for the appellant, the prosecution failed to prove demand or obtainment of Rs.5000/- from the defacto complainant Shankar who was examined as PW-2. The Hon'ble Supreme Court has time and again has held that proof of demand is a *sine quo non* in the case of trap. Mere proof of acceptance not sufficient to hold the accused a public servant guilty of misconduct. In this case, the demand not been proved by the prosecution. PW-2 Shankar had deposed that on 13/12/2018 he and his cousin Pushpanathan were taken to the police station and from him Rs.1300/- was forcible taken away by Inspector Kannan (PW-5) and from his cousin Pushpanathan (PW-6) Rs.1000/- was taken by Inspector, Kamalakannan (PW-8). On the day of trap, he forcibly put Rs.5000/- in the pocket of a person wearing uniform and he does not able to identify, who he was. PW-9 Village President, Mr.Rajendran had deposed that the money was demanded by the Inspector Kannan and he gave Rs.5000/- to him and got

the release of PW-2 and PW-6. Therefore, submitted that except the exculpatory testimony of the policemen implicating the accused, there is no independent witness to support the case of the prosecution. Hence, the trial Court judgment is to be set aside.

14. It is a case of trap and the trap proceedings initiated at the instance of Shankar (PW-2). The evidence of the prosecution witnesses including PW-2, PW-6, PW-9 and PW-10 had in unison deposed that, on 13/12/20018, Shankar (PW2) and Pushapanathan (PW6) along with the two wheeler were brought to the police station on suspicion. They were detained in the police lock up that night and were let out on the next day after getting the letter from Rajendiran (PW-9). The said letter, which is marked as Ex.P12is an undated letter. The content of this letter indicates that PW-2 and PW-6 who were taken to the police station on suspicion sent back after completion of harassment. There is no complaint of harassment or demand of money said in this letter. However, Rs.5000/- smeared with phenolphthalein and entrusted to PW-2 in the office of DV&AC, Kanchipuram under the entrustment mahazar Ex.P-4 on 16/12/2018 at 4.30 p.m found in possession of the accused and recovered

under mahazar Ex.P-5 at Uthiramerur Police Station on the same day at about 18.35 pm.

15. The learned counsel for the appellant/accused contented that, the trial Court failed to note that the prosecution has not proved the foundation fact of demand as well as the acceptance. The presence of phenolphthalein in the hands of accused or in a portion of his pant cannot led to an inference that the accused demanded and accepted illegal gratification. According to Kannan (PW-5), the Inspector of police, on 16/12/2018 at about 6.30 p.m, the Vigilance police brought the accused to his room. The accused hands were up. The plain clothe police came escorting the accused. The possibility of the vigilance personals handled phenolphthalein earlier on that day during entrustment proceedings, contacting with the hands of the accused cannot be ruled out.

16. Relying on the constitutional bench judgement rendered by the Supreme Court in *Neeraj Dutta-vs-State (Govt. of N.C.T. of Delhi)* reported in *[2023 live Law (SC) 211]* and the judgement of Bombay High Court in *Suryabhan v. State of Maharashtra* reported in *[1995 Crl.Law*

Journal 107] submitted that the trial Court judgement is liable to be set aside.

17. In contra, the learned Govt. Advocate (Crl. Side) appearing for the State submitted that the recovery of Rs.5000/- smeared with phenolphthalein duly proved through the evidence of the shadow witness PW-3 and PW-12-Scientific Expert who has given opinion that the right hand, left hand and pant pocket portion of the accused on test prove the presence of phenolphthalein indicating that the accused received the marked currencies and kept it in his pant pocket. It is not false to say that the money was forcibly kept by the defacto complainant (PW-2) in the pocket of the accused. The accused has not explained about the presence of the tainted currency in his back pant pocket. All the prosecution witnesses have consistently spoken about the fact that PW-2 and PW-6 were taken to the police station on 13.12.2008 on suspicion. Even the hostile witnesses have supported the fact that the vehicle key as well as the vehicle was retained in the police station and recovered during the trap proceedings. The possession of the vehicle key and the tainted money by the accused proves that illegal gratification was demanded for the release

of the two wheeler. If really Shankar and Pushpanathan were let off after getting letter from the Village President Rajendran (PW-9), there is no necessity for the accused to retain the key of the two wheeler with him or the two wheeler being parked in the police station.

18. Therefore, the learned Government Advocate (Crl.Side) for the State submitted that, the guidelines laid down by the Hon'ble Supreme Court in *Neeraj Dutta case* applies to the present case and even if the complainant had turned hostile, the circumstantial evidence as spoken by the prosecution witnesses clearly prove the demand of gratification as well as the acceptance of Rs.5000/- as bribe to release the two wheeler by the accused beyond reasonable doubt. The foundational facts and ingredients required to prove demand and acceptance being fully satisfied, the judgment of the trial Court to be upheld.

19. The learned Government Advocate (Crl.Side) appearing for the State further submitted that the pitu position of the villagers, who were brought to the police station to extract money under the threat of prosecution, the power of the police and their influence over the witnesses

had made them to turn hostile. PW2, PW6, and PW9 substantially corroborating the prosecution, except the recovery is a proof of the influence of the policeman over the villagers. Therefore, pleaded that appeal deserves to be dismissed.

20. The point for consideration in this case is, whether the testimony of PW2, PW6, PW9 and PW10, who all turned hostile, after endorsing the case of the prosecution in part, create doubt about the prosecution case and render the trap proceedings gets vitiated as unbelievable?.

21. The testimony of the prosecution witnesses read as whole actually proves the prosecution case. The fact that PW-2 and PW-6 were taken to the police station, on suspicion by the police attached to Uthiramerur police station on 13.12.2008 along with their two wheeler and the money had in their possession taken by the police is spoken by PW-2 and PW-6. They both were detained in the police station on that night is also proved through PW-2, PW-6, PW-9 and PW-10. They were released from the illegal custody only on the next day, after PW-9 and

PW-10 went to the police station and giving the letter Ex.P-12. The inconsistency over the payment of money on 14.12.2014, when PW-2 and PW-6 were allowed to go along with PW-9. This inconsistency is not a material to vitiate the prosecution case, since the material fact need proof is whether there was an illegal demand of Rs.5000 to release the two wheeler and whether the appellant received Rs.5000/- on 16.12.2018 and got into the trap laid by the respondent police.

22. The presence of accused in the police station on the day of trap is not disputed. The recovery of tainted money from his possession also not denied by the accused. His case is that, the money was forcibly trusted inside his pocket. However, the evidence let by the prosecution, as spoken by PW3 the shadow witness and recorded in the recovery mahazar Ex.P5 indicates that the Trap Laying Officer enquired the accused after the sodium carbonate test, whether he received money from PW2. The accused admitted and took out the money from his left side back pant pocket. Therefore, the contention of PW2 that he forcibly kept the money in the pocket of the accused, appears to be a false evidence keeping money on the back pocket of a pant, without knowledge or even forcible is almost

impossible. From his testimony it could be easily inferred that PW-2 had been won over by the accused, therefore he has contradicted his earlier statement after giving the complaint and initiating the trap proceedings. The Constitution bench of the Supreme Court had in Neeraj Dutta case has held that proof of demand and acceptance of illegal gratification by a public servant, as a fact in issue is a Sine qua non. In order to establish the guilt of the accused the prosecution s to first prove the demand of illegal gratification and subsequently the acceptance. As a matter of fact in the event of complaint dies or not available to let in the evidence or turned hostile during the trial, the demand of illegal gratification can be proved by letting in the evidence either orally or by documentary evidence.

23. In this case, though PW2 and PW6 have treated hostile by the prosecution, the shadow witness (PW3) through his testimony, without any pale of doubt had proved the case of the prosecution regarding demand and acceptance. The circumstantial evidence likely recovery of the money and the presence of phenolphthalein in the hands and pant portion of the accused proves that Rs.5000/- received by the accused from PW2, which was entrusted to him under the entrustment mahazar earlier

that day as narrated in Ex.P4. The money is passed on to the accused on his demand as a consideration to release the two wheeler of PW 2, Shankar. Therefore, this Court finds no error in the appreciation of evidence by the trial Court, holding the appellant/accused guilty of misconduct. Being a public servant, the demand of illegal gratification for doing a favour viz, release of the two wheeler and subsequent obtainment of the illegal gratification, he is guilty of offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.

24. It is a case, policemen had brought two innocent persons to the police station detained them illegally at the station with an intention to extract money. The two wheeler of PW-2 retained and had demanded Rs.5000/-. The witnesses, who turned hostile had deposed about the involvement of the other policemen also. However, the substantial evidence implicate the appellant and the presumption of demand falls against him. Hence, this Court holds that the conviction and sentence imposed by the trial Court needs no interference.

25. As a result, **this Criminal Appeal is dismissed**. The judgement of conviction and sentence passed by the Special Judge and Chief Judicial Magistrate, Chengalpattu in Spl.Case No.12 of 2010, dated 30/01/2019 stands confirmed. The trial Court is directed to secure the accused and commit him to the prison to undergo the remaining period of sentence.

21.04.2023

Index:yes/no

Speaking order/non speaking order

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To:

- 1.The Special Judge and Chief Judicial Magistrate,Chengalpattu.
- 2.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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delivery judgment made in
Crl.A.No.86 of 2019

21.04.2023