IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.04.2023	Pronounced on : 21.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.219 of 2016

S.Vijayaraghavan, ... Appellant/Accused

/versus/

The State Represented by Inspector of Police,
Vigilance and Anti-Corruption,
Kanchipuram,
Kanchipuram District. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to call for the records and set aside the orders passed in Special Case No.6 of 2015 on the file of the Special Judge and Hon'ble Chief Judicial Magistrate, Thiruvallur, dated 07.03.2016 against this appellant/accused and grant such other or further relieves in the nature of the case.

For Appellant : Mr.R.Thirumoorthy

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

J U D G M E N T

The appellant Mr.Vijayaragavan is a former Assistant Director of Drugs Control, Tiruvallur. For demand and acceptance of illegal gratification of Rs.20,000/- from G.Ashok, Secretary, Tiruvallur District Drugs and Cosmetics dealers Association, he was prosecuted by the State through its Inspector of Vigilance and Anti Corruption.

2. According to the prosecution, on 25/09/2004, Tmt. Tamilselvi, the Inspector of Police, DV & AC, registered the complaint given by Ashok reporting that, he and one Sudharsan were running a Pharma business at Avadi in the name of M/s.Ragavendra Pharma Distributors. His partner Sudharsan died in a road accident on 30/06/2014. So, the partnership was reconstituted inducting Tmt.Anuradha wife of Sudharsan. Thereafter, Ashok and Anuradha applied for name transfer and met the appellant on 23/09/2014. The appellant demanded Rs.40,000/- bribe to transfer the licence of M/s.Ragavendra Pharma Distributors in the name of Ashok and Anuradha. Next day, on 24/09/2014, when Mr.Subramanaiam the brother of the deceased Sudharsan met the appellant for transfer of licence of M/s.Ramson Medical Distributors which stood in the name of the deceased Sudharsan, the appellant demanded additional sum of Rs.10,000/-. Thus, to effect the name transfer of M/s.Ragavendra Pharma Distributors and M/s.Ramson Medical Distributors, the appellant demanded totally Rs.50,000/-. After much persuasion, the appellant reduced his demand and fixed Rs.10,000/- for each application and asked the complainant to bring Rs.20,000/- to his office on 26/09/2014, at about 10.30 am.

3. As a follow up, Tmt.Tamilselvi, Inspector of Police, DV&AC, arranged for trap. Mr.Murganantham and Parthiban were requested to be the shadow witnesses for the trap proceedings. On 26/09/2014, at about 7.00 am, the trap team along with witnesses met at DV&AC Office at Kanchipuram. Before proceeding to the Office of the Assistant Director of Drugs Control at Tiruvallur, she demonstrated the significance of Sodium carbonate and phenolphthalein test to the witnesses. 20 Thousand Rupees notes were smeared with phenolphthalein after recording the serial numbers of those notes and it was entrusted to G.Ashok with an instruction that it must be given to the appellant only if the appellant demands bribe. Muruganatham was asked to accompany G.Ashok to watch the events.

4. At about 8.45 a.m., the team left Kanchipuram and reached Tiruvallur at about 11.00 am. Parked their vehicle 150 meters away from the Office of the appellant. Ashok and Murganantham went to the appellant office. Others took position around the appellant Office and waited for the pre-arranged signal from Ashok. At the appellant Office, Ashok enquired the appellant about his application. The appellant asked whether he has brought the money, immediately Ashok took out the phenolphthalein smeared currency from his pocket and gave it to the appellant. In turn, the appellant received it in his right hand, counted the money with both his hand and kept the money in his left side pant pocket.

5. Ashok came out and gave signal to the trap team who are waiting outside. On receipt of the signal the trap team entered into the office. Ashok identified the appellant to the trap team. Two tumblers of sodium carbonate solution was prepared and the appellant was asked to dip each of his hands separately into the colourless sodium carbonate solution. The colourless solution in those two tumblers turned into pale red colour when the appellant dipped his hands. The hand washed solutions were collected in two separate bottles and labelled as 'L' and 'R'. Sivapadasekaran, the Deputy Superintendent of Police in the trap team arrested the appellant and enquired him about the money received from Ashok. The appellant took out the money from his pant left back pocket and handed it over to a member of the trap team. The numbers found in the currencies recovered from the appellant was compared with the numbers found in the entrustment mahazar and found tallied. The appellant was given a dhoti and his left side pant pocket portion was dipped in the colourless sodium carbonate solution. The solution coloured turned into pale red and the solution was collected in a bottle and labelled as 'P'. Applications along with documents submitted by G.Ashok and Subramaniam for name transfer, Rs.20,000/- recovered from the appellant were seized and seizure mahazar prepared in the presence of the Venkatesh the Office Superintendent of Drug's Control and Sukumaran the Drug Inspector besides the two witnesses for the seizure.

6. Before, the Chief Judicial Magistrate, Tiruvallur the appellant was tried for charges under section 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The Trial Court, on appreciating the testimony of 15 prosecution witnesses, 41 documents marked as Exhibits and 6 material objects, held the prosecution has proved the guilty of the accused and sentenced him to undergo One Year R.I and fine of Rs.10,000/- in default 3 Months S.I for the offence under Section 7 of P.C Act, 1988 and Two Years R.I and to pay fine of Rs.10,000/- in default, 3 Months S.I for the offence under Section 13(2) r/w 13(1)(d) of PC Act, 1988.

7. The appellant challenge the conviction and sentence of the Trial Court on the following grounds:-

> * Demand of illegal gratification made by the accused not proved.
> * No averments/statements spoken by P.W.11 to say that the accused instructed to pay the bribe amount on 26/09/2014.
> * There are material discrepancies found in the evidence of PW-1 and PW-11 who were relied for the purpose of proving the demand.
> * Anuradha in whose name the applications for name transfer was not examined. P.W-1 stated that she was accompanied by P.W-1 on the date of alleged 1st demand on 23-09-2014. Omission to examine Anuradha is fatal to the prosecution case.

* Quarrel between the complainant P.W-1 and the accused in respect of forgery signature of Anuradha in the application prompted P.W.1 to give the false complaint.

* The trial Court failed to consider the malafide in P.W.1 evidence. The Complainant P.W-1 is known to the accused for 13 years which was admitted by the complainant during cross examination. While so, the explanation of the accused that Rs.20,000/- received from P.W.1 as hand loan ought to have been accepted. Explanation given by the accused and proof through Prosecution Exhibits Ex.P-6 & Ex.P-7 not at all given due consideration.

* Ex.P-1 & Ex.P-2 applications does not contain the entire documents produced along with the application. If produced, it would have exposed, the signature of Anuradha in Ex.P.1 and Ex.P.2 are different from the signatures found in the other documents.

* Non Examination of Anuradha and Parthiban (Accompanying Witness to the trap) and Selvi (Who has been temporary Employee working in Drug Control Office) and absence of reliable Independent witnesses were not taken note by the trial Court.

* Officer namely Tamil Arasi (PW14) who registered FIR acted as a trap laying officer. Investigation officer namely Ganesan (PW15) also participated in the trap proceedings. Therefore investigation has not been conducted in a free and fair.

* Rule 49 of Directorate of Vigilance and Anti Corruption manual which mandates preparation of the Site Plan A site plan of the scene of occurrence should invariably be prepared showing the relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money. The site plan should be got attested by members of the trap party, and should form part of the record of Investigation is completed violated and

* Rough Sketch/Site plan does not have full description in respect of relative position of the bribe giver and the full picture of place of occurrence.

* Authority who accorded sanction to prosecute did not apply her mind and while granting sanction. Non application of mind of the sanctioning authority is fatal to the prosecution. Which is evident from the order of sanction of prosecution of (Exhibit P.12).

8. Per contra, the Learned Government Advocate (Crl.Side) appearing for the respondent submitted that the prosecution has proved the guilt of the accused through reliable witnesses and unimpeachable documents. P.W.1 G.Ashok, who is the defacto complainant had spoken about the demand of illegal gratification made by the appellant when he was asked to transfer the license in the name of P.W.1 (Ashok) and Anuradha, the widow of Sudharsan. Ex.P.1 is the Drug Licence name transfer application dated 23.09.2014, which contains necessary enclosure. When a similar request from (P.W.11) Subramanian, the brother of deceased Sudharsan made on 24.09.2014, the appellant made an additional bribe of Rs.10,000/- finally, the accused agreed to receive Rs.20,000/- for processing both the applications. P.W.1 (Ashok) was not inclined to give bribe to the accused, hence gave a written complaint to P.W.14. The complaint marked as Ex.P.3 dated 25.09.2014. The Inspector of Police, who received the complaint registered F.I.R (Ex.P.32) and proceeded with the trap arrangements. The letters from Inspector of Police addressed to the District Collector, Kancheepuram and Joint Director of Agriculture, Kanchipuram, the Investigation Officer sought for two Officers been deputed for being shadow witness for the trap proceedings marked as Ex.P.33 and Ex.P.34.

9. On this request, T.Muruganandam (P.W.2) Agricultural Officer, Pest Quality Control Lab, Kancheepuram and S.Parthiban, P.A to Collector (Land Acquisition), Kanchipuram, were deputed and in their presence, the entrustment and trap was conducted. The accused, after receiving the bribe money was caught with the tainted currencies in his possession. The phenolphthalein and Sodium Carbonate test on his hands and left side pant pocket portion, has proved his possession of currencies smeared with phenolphthalein. The Chemical Analysis report marked as Ex.P.30, has confirmed the presence of phenolphthalein and sodium carbonate in the right and left hand wash solutions of the accused which is marked as M.O.2 and M.O.3 as well as in the pant wash solution marked as M.O.4.

10. Apart from, a sum of Rs.20,000/- from the possession of the accused, and Rs.18,070/- found concealed under the refrigerator kept in the room of the accused. There was no claimant for that money. Same was recovered and marked as M.O.6.

11. The explanation given by the accused admitting receipt of Rs.20,000/- only as loan to meet out his urgent expenses, due to sudden breakage of his wearing glass found false by his own contradictory evidences. The false explanation prove that, to get rid of the accusation, the accused has invented the said defence. To show as if, there was money transaction between the defacto complainant and the accused and for which, cheque for Rs.20,000/- and pro-note for the same amount, the accused has documents and forwarded through post to the Investigating Officer along with the letter as if, soon after the arrest of the accused, these two documents were found in his room. The perusal of these two exhibits stealthy introduced by the accused in the course of investigation through anonymous letter had exposed the accused. The cheque (Ex.P.6) dated 09.10.2014 is drawn in favour of P.W.1 (Ashok) for Rs.20,000/-. The accused has signed a the cheque and dated it as 26.09.2014 i.e., on the date of trap, along with this a demand draft has also been forwarded through that letter and the said demand draft which is marked as Ex.P.7 is also dated 26.09.2014 and it is for Rs.20,000/-. These two documents were not found at the time of trap and search of the room. However, the accused to make out a defence, has forwarded these two letter documents along with a covering to the Investigating Officer by post. The said covering letter is marked as Ex.P.15 which is purportedly signed by one Venkatesan intimating that, the pro-note and cheque were found in the office file of Mr.Vijayaraghavan (accused) and therefore, same is forwarded to the Investigating Officer since it may be necessary for investigation. When P.W.7 Venkatesh, who is the Office Superintendent at the Office of Assistant Director of Drugs Control, Tiruvallur, confronted with the letter purported to have been emanated from the Assistant Director Office and signed by one Venkatesan. P.W.7 has stated that, no such letter sent by the Office of Assistant Director of Drugs Control, Tiruvallur and there is no staff by name Venkatesan. He is the only person by name Venkatesh in the Office and used to sign in Tamil and not in English. The signature found in Ex.P.15 letter is not his signature.

12. Hence, the Government Advocate (Crl.Side) for the respondent submitted that the demand and acceptance been proved beyond reasonable doubt by the prosecution and the attempt made by the accused to rebut the presumption of demand and to justify the receipt of Rs.20,000/- as a hand loan miserably failed since he has taken self destructive plea regarding the reason for receiving the money. Whereas, P.W.1 and P.W.11 had deposed about the illegal demand made by the accused to process the name transfer applications (Ex.P.1 and Ex.P.2) to prove the case of the prosecution.

13. Regarding the plea questioning the validity of sanction to prosecute, the Learned Government Advocate (Crl.Side) for the respondent stated that, the sanctioning authority has stated about the reason for his subjective satisfaction and there is no infirmity in Ex.P.12.

Point of determination:-

Whether Rs.20,000/- recovered from the accused is the money paid as illegal gratification or received by the accused as hand loan to met out his urgent expenses?

14. Through Ex.P.1 and Ex.P.2, name transfer application and the annexures along with the application prove the fact that, Sudharsan, who is the partner in M/s.Ragavendra Pharma Distributors along with Ashok (P.W.1) and Sole Proprietor of M/s.Ramson Medical Distributors, died in a road accident on 30.06.2014. Therefore, P.W.1 has given the application (Ex.P.1) for name transfer by including the widow of Sudharsan as one of the partner in M/s.Ragavendra Medical Distributors. Likewise, P.W.11, Subramanian who is the brother of the deceased Sudharsan has given his application (Ex.P.2) for drug license name transfer.

15. It is contended by the Learned Counsel for the appellant that prosecution failed to examine Anuradha the widow of Sudharsan to prove that the application made by P.W.1 and P.W.11 was with her consent and the signature found in these applications were made by Anuradha. It is the case of the appellant that, when he suspected forgery in these two applications, he insisted for the presence of Anuradha. Being infuriated by this P.W.1 has fixed the appellant in the fake trap proceedings.

16. If really the applications were defective or suspicious, there was no impediment for the accused to return the applications with necessary remarks. In this case, no such remarks found in the applications marked as Ex.P.1 and Ex.P.2. That apart, the accused admits the receipt of Rs.20,000/- from P.W.1 on 26.09.2014. Having accepted the receipt of the money from P.W.1 (Ashok), it is the burden of the appellant to probabilise the defence that the money he received is not an illegal gratification received in connection with the name transfer applications. The appellant soon after the trap proceedings, has given an explanation for the possession of tainted currency of Rs.20,000/- as if his wearing spectacle broke and to buy a new one, he was in need of money and when P.W.1 came to his office he got loan of Rs.20,000/- from him and for that he also executed the pro-note and post dated cheques.

17. According to the accused, his spectacles got broken and when he went to the Agarwal Eye Hospital, Tiruvallur, they said to repair the spectacles, it will take three days and suggested to get substitute glass, which will costs around Rs.10,000/-. So, on the next day, when P.W.1 came to met him, he borrowed Rs.20,000/- to met the expenses.

18. This could have been taken as a reasonable explanation, if Ashok P.W.1, had not given a complaint, the day before reporting about the demand of Rs.20,000/- by the accused to process the name transfer applications or had the money recovered from the accused/appellant not smeared with phenolphthalein, then it would have been presumed that the accused suddenly requested for a hand loan and P.W.1 Ashok gave the money in his hand which he kept for Kolloor Moogambigai Temple. Contrarily the demand of Rs.20,000/- been brought to the notice of the Investigating Officer, the day prior to the trap, bribe money was smeared with phenolphthalein and kept separately and entrusted to P.W.1 with instruction that, it should given to the accused only if he demands. Since there was a prior demand on 23.09.2014, P.W.1 has gone to the office of the appellant/accused with Rs.20,000/- on 26.09.2014. The money was given to the accused on his demand. No one could have anticipated that the accused will have an urgent need for Rs.20,000/- and therefore, he can be trapped with tainted money and went prepared with money. The explanation given by the accused soon after the trap proceedings, read as below:-

> *"Today morning, the Secretary of TVLR C & D Association, namely Ashok came to my office. Being Friday, I was about to leave TVLR for Madras. Unfortunately, my spectacles got broken, for which I approached Agarwal Eye Hospital, TVLR yesterday on 25.09.2014 12.00 Noon, for which they said to repair the spects, they have to send the same to Madras only which will take 3 days. Then they suggested to get a temporary spects for which they asked me to pay a sum of Rs.10,000. So, to get back the*

damaged spects repaired and the new one, I asked for a hand loan of Rs.20,000/- to him.

He also said I have brought Rs.20,000 for proceeding to Kalloor temple, Tvir to pay Kalloor Moogambigai Koil. So, if you want, take this and give me back on his return which was only found in my pocket."

19. Not stopping with the above explanations made immediately after the trap, the accused/appellant has tried to enhance his theory of borrowing on execution of pro-note and post dated cheques Ex.P.6 and Ex.P.7. The accused has also gone ahead and had contended that, after the trap proceedings, he has taken the demand draft and deposited into the account of the defacto complainant P.W.1 on 19.01.2015.

20. The Trial Court has put a right question to itself that if the accused has received Rs.20,000/- as a hand loan from P.W.1, since it has already been seized by DV & AC on the complaint given by P.W.1, there is no legal or moral obligation on the part of the accused to pay back Rs.20,000/-. While so, why should he create record as if, he has taken a demand draft of Rs.20,000/- and deposit in the account of P.W.1 in HDFC Bank not in operation.

21. The Learned Counsel appearing for the appellant rely upon the following judgments, for the preposition that, preponderance of probability is sufficient to rebut the presumption and onus is on the prosecution to prove that the money received by the accused is an illegal gratification.

1. ***Som Parkash -vs- State of Punjab*** reported in ***1992 CRL.L.J 490***.

2. ***C.Sukumaran -vs- State of Kerala*** reported in ***2015 CRL.L.J 1715***.

3. ***Madhukar Bhaskarra Joshi -vs- State of Maharashtra*** reported in ***2001 Crl.L.J.175.***

22. This Court, after giving anxious consideration on the submission made by the Learned Counsel for the appellant, the judgments cited above and the Constitutional Bench judgment of Hon'ble Supreme Court rendered in ***Neeraj Dutta -versus- State (GOVT. OF N.C.T. OF DELHI)*** case, find that, in the instant case, the demand of illegal gratification is consistently spoken by P.W.1 and corroborated by P.W.1 (Ashok) besides P.W.11(Subramaniam), both of them are applicants. The testimony of P.W.1 is corroborated by the shadow witness of P.W.2 (T.Muruganandam). The obtainment is accepted by the accused besides solid proof of acceptance by the eye witness as well as the scientific analysis report about the presence of phenolphthalein in the hand wash and pant wash of the accused.

23. The foundational facts required for demand as well as acceptance are proved by the prosecution through these witnesses. The minor discrepancies regarding the exact words used by the accused while demanding the money may not be of much consequence in the light of the fact that receipt of the money been admitted by the accused. Whether the said receipt of money is an illegal gratification or not is to be tested in the light of the explanation given by the accused and Ex.P.6 and Ex.P.7.

24. According to the accused/Vijayaraghavan, he received the money as a hand loan and for that purpose, he has issued the post dated cheque for Rs.20,000/- dated 09.10.2014 drawn in favour of P.W.1 Ashok and a pro-note Ex.P.7 drawn in favour of P.W.1. Both these two documents are self-serving documents purportedly created by the appellant and sent to the Chief Judicial Magistrate and Investigating Officer pending, investigation. These two documents received by Investigating Officer with a covering letter Ex.P.15 purportedly to have been sent from the office of Assistant Director Drugs Controller signed by one Venkatesan.

25. P.W.7, Venkatesh, Superintendent at Assistant Director of Drugs Control Office, Tiruvallur had categorically said that, no such letter was sent from his Officer nor the signature found in Ex.P.15 is made by him. A promissory note (Ex.P.7) and cheque (Ex.P.6) executed in favour of P.W.1 Ashok by the accused, still in possession of the accused and found in his Office after his arrest and search conducted by DV & AC itself will show it is a cock and bull story conceived by the appellant to mislead the track of investigation. His attempt to implant fabricated evidence has been miserably failed since the concoction of the record on the face of the document is exposed by the signature with date as 26.09.2014 for a cheque dated 09.10.2014 along with stamped pro-note.

26. This Court, on due consideration of the submissions made by the appellant hold that there is no error in the appreciation of evidence by the trial Court. Therefore, the ***Criminal Appeal is dismissed***.

27. The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

21.04.2023

Index :Yes.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,
1. The Chief Judicial Magistrate, Thiruvallur,
2. The Inspector of Police,
Vigilance and Anti-Corruption, Kanchipuram,
Kanchipuram District.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery judgment made in
Crl.A.No.219 of 2016

21.04.2023