IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on: 16.03.2023	Reserved on: 06. 04.2023

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.299 of 2016

T.Periyasamy .. Appellant

/versus/

The State of Tamil Nadu,
represented by the
Inspector of Police,
Vigilance and Anti Corruption,
Villupuram.
(Crime No.2/2007) .. Respondent

Prayer : Criminal Appeal has been filed under Section 374(2) of Cr.P.C., 1973 r/w Section 27 of the Prevention of Corruption Act, against the judgment dated 31.03.2016 made in Spl.C.No.8 of 2014 on the file of the Court of the Chief Judicial Magistrate-cum-Special Judge, Villupuram convicting the appellant for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and convicted and sentenced to undergo 1 year RI for both the offences and to pay a total fine of Rs.3,000/- and the sentences to run concurrently.

For Appellant :Mr.S.Karthikeyan

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

JUDGMENT

Periyasamy, the appellant herein, while serving as Village Administrative Officer of Kachirapalayam Village, Kallakurchi Taluk, Villupuram District, was caught red handed in the trap proceedings held on 19/07/2007 for accepting bribe of Rs.300/- from the Defacto complainant, Mr.K.R.Kumar, who approached the appellant to get community certificate and income certificate for his wife to get loan from THADCO. In Spl.C.C.No:2/2008, charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, were framed against him and the Special Court for Corruption Cases at Villupuram found him guilty of demand and acceptance of bribe of Rs.300/- from the defacto complainant to issue community certificate and income certificate. Being aggrieved by the Judgment of conviction and sentence dated 31/03/2016, the Criminal Appeal is preferred.

2. <u>The case of the prosecution as spoken by the witnesses:-</u>

On 18/07/2007, the defacto complainant Kumar (PW-2) gave a complaint to the Vigilance and Anti-Corruption, the Inspector at Villupuram alleging that to get loan under the THADCO, Women Self

Help Finance Scheme in the name of his wife Ambika, he and his wife went to the Taluk Office at Kallakuruchi, on 06/07/2007 to get community certificate and income certificate. He submitted the application along with necessary documents and two challans for payment of fees Rs.10/- each, for the two certificates. The staff in the Taluk Office received his applications and affixed the office seal and gave back the applications to get the signature of the Village Administrative Officer and the Revenue Inspector. He went to Kachirapalyam, met the Village Administrative Officer (appellant herein) and gave his applications and the documents. After verifying the photo copies of the documents with the original documents, the appellant returned the original documents, retained the applications and the photo copies of the enclosures and told the defacto complainant to come after 10 days and he will keep the certificates ready. Thereafter, on 18/07/2007 at 10.30 a.m, he met the appellant and asked for his certificates. The appellant demanded Rs.300/-. When he enquired, whether that money is for any fees to be paid, the appellant shot back and said that, he is going to get loan and the subsidiary for several thousands, can he not afford to give Rs.300/-? Do he expect to get the certificates for free? When the defacto complainant said that he is poor and cannot afford to pay bribe, the appellant retorted not to plead so and to get certificates he must come with money by afternoon. Not inclined to give bribe, the complaint was given to take action against the appellant working as the Village Administrative Officer, at Kachirapallyam.

3. The complaint in writing was taken up for investigation, on registering the case in Crime No.2/2007 under Sections 7 of the Prevention of Corruption Act, 1988 at 16.30 hours on 18/07/2007. The Inspector of Police arranged for two government officials to be witnesses for the trap proceedings. On 19/07/2007, at about 9.00 a.m at the Directorate of Vigilance and Anti-Corruption office at Villupuram, the pre-trap proceedings was conducted in the presence of witnesses and entrustment mahazar was drawn narrating the demonstration with phenolphthalein–sodium carbonate test and entrustment of marked 100 rupees currencies 3 in numbers, smeared with phenolphthalein powder. At about 13.00 hours, the trap team went to the Village Administrative Office at Kachirapalayam. Tr.Kumar, the defacto complainant and one of the shadow witnesses went to the room of the Village Administrative Office and met the appellant. When the appellant demanded Rs.300/-, the defacto

complainant took out the money from his pocket and gave it to the appellant. On receiving the tainted money in his right hand, the appellant kept the money in his left side shirt pocket. Thereafter, the appellant took out the applications and certificates from the almirah and gave the certificates saying he has already signed the certificates. After receiving the certificates, the defacto complainant and the shadow witness left the room of the appellant. The defacto complainant came out and gave the pre- arranged signal to the trap team waiting outside the Village Administrative Office. On receiving the signal, the trap team went inside the VAO room and the appellant was identified by defacto complainant.

4. The Trap Laying Officer, thereafter, introduced himself and the team members to the appellant. The hand of the appellant was tested with the sodium carbonate solution and the solution colour turned 'light red'. The solution of hand wash was collected in a bottle and sealed it. Thereafter, on questioning, he produced the tainted money of Rs.300/- from his left pocket of his shirt. The Trap Laying Officer compared the serial number, found that those three hundred rupees note are that of the numbers noted in the entrustment mahazar and also found both tallied.

The shirt pocket portion was dipped in the sodium carbonate solution and tested for the presence of phenolphthalein. The solution colour has turned 'light red' and hence, the shirt and the tainted money were collected under the mahazar. After getting the report from the Laboratory regarding the solution of hand wash and the shirt wash collected during the trap, final report filed by Mr.P.Manokaran, the Deputy Superintendent of Police, the Directorate of Vigilance and Anti-Corruption, Villupuram, who toop up the investigation of the case.

5. To prove the case, the prosecution examined 12 witnesses, marked 22 exhibits and 3 material objects.

6. PW-1 (Tr.L.Govindan) is the Revenue Divisional Officer, who accorded sanction to prosecute the appellant, since he is the competent officer to remove the appellant from his service. The sanction order marked as Ex.P1.The defacto complainant, Mr.K.R.Kumar, examined as PW-2. He has spoken about his complaint (Ex.P10). The demand of bribe Rs.300/- to issue the community certificate and income certificate on 18.07.2007 before the complaint and on 19.07.2007 after the complaint

and in the course of the trap proceedings, Ex.P2 to Ex.P9 are the applications for the community certificate, income certificate, the challan and the other documents like, copy of the ration card. The entrustment mahazar marked [Ex.P11]. The bribe money marked as M.O.1 (series). For corroboration of PW-2 evidence, PW-3 [Tr.E.Sheik Mahazar] has been examined, who is the Assistant, District Educational Officer, Villupuram. He deposed about the demand of bribe money by the appellant, when he and PW-2 entered in to the room of the appellant. He has witnessed the receipt of the bribe money by the appellant from PW-2 and placing it in his pocket. PW-3 had spoken about the recovery of the tainted money from the appellant. The phenolphthalein test conducted in the hands and the shirt pocket of the appellant. He has witnessed the recovery mahazar marked as Ex.P12; the observation mahazar Ex.P13; the rough sketch marked as Ex.P14; and the search list marked as Ex.P15. The shirt of the appellant recovered marked as M.O.2. PW-4-Village Administrative Officer and PW-7 [Tr.Dhanraj], and another Village Assistant, who were present in the office of the Village Administrative Officer, Kachirapallyam Village, had spoken about the visit of PW-2 to the office of the accused on 19.07.2007 at about 1.00 p.m., and thereafter, the visit of the Vigilance team and the trap. PW-4, however was treated as 'hostile'. After the trap, the solution was sent to the Scientific Laboratory and tested by PW-10 [Tmt.T.P.Thara], who has confirmed that the solution contains both the phenolphthalein and sodium carbonate. The appellant by way defence during the cross examination has suggested to the witnesses that the money was thrusted in his pocket by PW-2 saying that the money has to be taken as gift for his son's marriage for which PW-2 was unable to attend. The trial Court, however, declined to accept the defence theory and convicted the appellant.

7. The learned counsel appearing for the appellant submitted that firstly, the framing of charge itself is erroneous, since the date and time of demand as well as the date and time of acceptance is shown as 18.07.2007 at 10.30 a.m The error in the charge goes to the root of the case and therefore, it has occasioned to failure of justice. Secondly, the learned counsel appearing for the appellant submitted that, according to PW-11, he arranged two official witnesses. Accordingly, Mr.Shakmasaher (PW-3) and Mr. Chellapandian (not examined) came to the DV and AC office,Villupuram on 19.07.2007. The prosecution has failed to place the

documents before the Court to show that these two witnesses came to the DV and AC office with permission of the head of the department and on the written request made by the DV and AC, the appellant has explained the presence of three hundred rupees in his possession and the said explanation is plausible. While so, the trial Court ought not to have drawn the presumption against the appellant.

8. The learned Government Advocate (Crl.Side) appearing for the State, in response to the submissions, submitted that an error in the charge regarding the date and time of demand nowhere at any cost prejudiced to the appellant, he has understood the charge and has defended his case. When there is no failure of justice, the error in framing the charge will not vitiate the trial.

9. Referring Section 464 of the Code of Criminal Procedure, the learned Government Advocate (Crl.Side) submitted that the error in the charge is not a material irregularity, who opined that the failure of justice has in fact been occurred. Regarding the official witnesses, who are present for trap proceedings, the learned Government Advocate (Crl.Side)

submitted that PW-3 [Mr.Shakmasaher] has specifically stated in his chief examination that on the instruction of his Senior Officer, he went to the Vigilance and Anti-Corruption Office, Villupuram on 18.07.2007 at 05.45 p.m. In the cross examination, he has reiterated that on instructions of his Superior Officer, he visited the Directorate of Vigilance and Anti-Corruption Office on 18.07.2007 and 19.07.2007 and it was in oral instruction. When PW-11 [Mr.Kuppusamy] the trap laying officer, in his deposition has said that, he made a request to the Education Department and Agriculture Department to deputy two witnesses for the trap proceedins and accordingly, Mr.Shakmasaher from the Education Department and Mr.Selvapandian from the Agriculture Department attended the Directorate of Vigilance and Anti Corruption Office on 18.07.2007 in the evening and again, they reported on 19.07.2007 at 09.00 a.m.

10. Referring this portion of the evidence, the learned Government Advocate (Crl.Side) submitted that, when there is a material to show that the official witnesses were requested to assist the trap proceedings and with permission of the Superior Officers, both the official witnesses came

and participated in the trap proceedings, is spoken by the concerned witnesses as well as the trap laying officer and therefore, there is no scope of suspicious about the presence of the official witnesses in the course of the trap.

11. Regarding the recovery, the learned Government Advocate (Crl.Side) submitted that in the course of the trap proceedings, apart from tainted currencies, blank signed certificates were recovered from the possession of the appellant, which indicate that he had ready-made certificates with him and on obtaining bribe, he used to give the blank certificates for the person to use. This is one of the circumstances, which would indicate the appellant's habit of issuing blank community and income certificates, on receiving bribe and 9 numbers of signed blank certificates were recovered from the appellant and there is no plausible explanation from the appellant why he had kept so many numbers of blank signed certificates. Hence, the learned Government Advocate (Crl.Side) prayed for dismissal of the appeal confirming the order of the trial Court.

12. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the State and perused the materials available on record.

13. According to the prosecution, the defacto complainant[PW-2] went to the office of the appellant on 18.07.2007 at about 10.30 hours and met the appellant to enquire about his application submitted for income and community certificates. The application was submitted 10 days before the trap and when PW-2 approached the appellant for certificate, the demand of bribe emanated from the appellant. The first demand has been stated in the complaint marked as Ex.P10. Thereafter, the trap proceedings were laid. PW-2 instructed to give the tainted currency to the appellant, if he demands bribe. Accordingly, on 19.07.2007, PW-2 and PW-3 have gone to the office of the appellant on 19.07.2007 at about 09.00 a.m. The demand of Rs.300/- by the appellant from PW-2 noticed by PW-3, receipt of the money also noticed by PW-3 and spoken about the same. Thus, the evidence of PW-3 that the demand and receipt of the bribe money by the appellant on 19.07.2007 at 09.00 a.m., been corroborated by evidence of PW-3 and further submitted that, from the

recovery of the tainted money from the possession of the appellant his right hand and left side shirt pocket when tested with the sodium carbonate solution, the colour of the solution has turned light red indicating the presence of phenolphthalein. This fact has been proved through the scientific evidence namely, the testimony of Thara PW-10 and her report Ex.P19.

14. The learned counsel appearing for the appellant relying upon the judgment of this Court rendered in R.R.Govindarajan v. The Inspector of Police, District Crime Branch, Thanjavur, dated 24.02.2022, submitted that the error in the date and time of demand mentioned in the first charge for offence under Section 7 of the prevention of Corruption Act is in incurable defect and the same cannot be cured by virtue of Section 464 of Cr.P.C. The case cited above is under Section 482 of Cr.P.C challenging the order passed by the trial Court pending trial in a miscellaneous application directing denovo trial in view of defective charge. In this case, the learned Judge reading Section 215 along with Section 464 of the Code of Criminal Procedure harmoniously has concluded that omission to frame the charge or any error in the charge, would only be material, if

prejudice has been caused. The error or omission in the charge will not vitiate the trial and this legal position no more *res intregra* starting from ***Willie Slaney v. State of Madhya Pradesh reported in AIR 1956 SC 116.*** Time and again, the Courts have reiterated that the error in the charge or omission in the charge should stay in the evidence or particular in the offence will not vitiate the trial except in case of occasion for failure of justice and the irregularities or omission that has misled or caused prejudice to the appellant in his defence.

15. By mentioning the date and time of the first demand, which is the basis for the charge under Section 7 of the Prevention of Corruption Act, 1998, in this case, it will not vitiate the trial since on the date mentioned in the charge, there was a demand from the appellant as per the evidence of PW-2 who was overseen by PW-3. The case of the prosecution is that the appellant made two demands one on 18.07.2007 and another on the date of trap i.e on 19.07.2007. Even if it seems to be any error, that error will not vitiate the trial, since the appellant was given full opportunity to defend his case and there was no occasion for failure of justice.

16. The learned counsel appearing for the appellant relying upon the judgment of this Court in *A.Deenadayalan v. State reported by Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai reported in (CDJ 2018 MHC 681),* submitted that this Court has doubted the case of the prosecution when the prosecution has failed to produce the document to show that the official witness was officially called to be the witness for the trap proceedings that is the case where there is no evidence either oral or documentary to indicate, the official witness, who acted as shadow to the defacto complainant had material to show that he was present in the vigilance office on the request of the trap laying officer and at the behest of the superior officer. Contrarily, in this case, there is oral evidence to show that the official witness was procured on the request of the trap laying officer and they appeared before the Vigilance office on the instructions of their superior officer. Nowhere it is mandated that the proceedings for getting official witness be in writing and the same is to be placed before the Court. When the ocular evidence of the witness specifically inspires the confident of the Court, it is not necessary to be substantiated or reiterated through the documentary evidence.

17. In this case, the appellant admits that Rs.300/- was recovered from him by the trap laying officer. His explanation for the possession of Rs.300/- is that PW-2 thrusted the money in his pocket saying he was not able to attend the marriage of the appellant's son held recently. Therefore, the money to be taken as a gift for the marriage. This explanation failed to carry any merit because the file recovered from the appellant contains the application form, documents and blank certificates signed by the appellant. Ex.P18 (series) which is the blank certificates signed by the appellant speaks volumes about his conduct. After receiving the bribe money of Rs.300/-, he has handed over the blank signed certificate to PW-2 to fill it up as he likes. While the prosecution has proved the foundational fact of demand and acceptance of bribe money the attempt by the appellant to discharge the burden has failed since the explanation is not plausible and also contrary to the circumstantial evidence relied on by the prosecution.

18. As a result, **this Criminal Appeal is dismissed.** The judgment of conviction and sentence passed by the Chief Judicial Magistrate-cum-Special Judge, Villupuram, made in Spl.C.No.8 of 2014, dated

31.03.2016, is confirmed. The period of sentence already undergone by the appellant is set off. Bail bond if any executed by the appellant shall be cancelled. The appellant shall arrest and remand into the prison to undergo the remaining period of sentence.

06.04.2023

Index:yes
Speaking order/non speaking order
NCC:yes/no
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To:
1.The Chief Judicial Magistrate cum Special Judge, Villupuram.
2. The Inspector of Police, Vigilance and Anti Corruption, Villupuram.
3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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delivery Judgment made in
Crl.A.No.299 of 2016

06.04.2023