# IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.06.2023

Pronounced on :15.06.2023

Coram:

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

Criminal Appeal No.338 of 2016

1. V.Rajendran, aged about 61 years,
   S/o.Venkatasamy,
   Q-4, TNHB, Old Housing Board,
   Bangalore Road, Krishnagiri Taluk,
   Krishnagiri District.

2. K.Govindasamy,
   S/o.Kolandai,
   Jawankottai, Pothapuram Post,
   Krishnagiri Taluk and District. ... Appellants/Accused 1 & 2

/versus/

The State by the Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri District. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to set aside the conviction and sentence passed against these appellants made in Spl.C.C.No.28 of 2009, on the file of Chief Judicial Magistrate/Special Judge, Krishnagiri dated 18.04.2016.

For Appellant :Ms.Selvi George

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

The Appellants Thiru.V.Rajendiran and K.Govindasamy, both public servants employed as Village Administrative Officer and Village Assistant respectively were found guilty of receiving bribe of Rs.1000/- from the defecto complainant Pownraj to mark the EB transmission line in the FMB sketch. The bribe money was demanded and received by A-1. From out of Rs.1000/-, A-1 had given Rs.100/- to his Village Assistant A-2. They both were caught in the trap laid by the Vigilance Inspector on 28/08/2008.

**2.** The Trial Court convicted them for the offence under Section 7 and 13 (2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced them to undergo six months R.I and to pay a fine of Rs.1000/- in default 1 month S.I for the offence under section 7 of P.C Act. To undergo one year R.I and to pay fine of Rs.1,000/- in default, one month S.I for the offence under section 13(2) read with 13(1)(d) of PC Act,1988.

3. Case of the prosecution:-

Thiru.Pownraj, P.W-3 the defacto complainant applied for Electricity Service connection on 03/07/2008 for his newly constructed house. He was informed by the Clerk in the EB office to get a signature of VAO and submit the application. Accordingly, P.W.3 obtained the signature of VAO and submitted his application in the EB office on 03/07/2008. Next day, when we went to EB office, P.W.3 was informed that EB transmission line must be mark the FMB sketch. Again, P.W.3 went to the office of the first accused on 25/08/2008 and met him at 9.30 a.m, at the time A-1 demanded Rs.1000/- for marking the EB transmission line in the FMB Sketch. P.W.3 expressed his inability to pay the money demanded, but A-1 refused to mark the EB transmission line in the FMB sketch without receiving bribe. P.W.3, again on 27/08/2008 morning met the first accused and requested him to reduce the bribe amount but he did not yield to the request. Since the first accused was firm in his demand, P.W.3 went to the Vigilance Office at about 5.00 p.m and reported about the demand of illegal gratification by the first accused. Based on his complaint, Ex.P-3, the F.I.R was registered and trap was organized on 28/08/2008. At about 11.40 am, P.W-3 and the shadow witness

Mr.Manickam examined as P.W-5 met A-1 at his office. A-1 reiterated the demand and P.W-3 gave the tainted ten hundred rupees notes to A-1. A-1 counted the notes, took one note from it and gave it to his Assistant A-2 and he kept it in his pant pocket. Thereafter, A-1 kept the remaining nine notes of Rs.100/- denomination in his shirt pocket. Then, he marked the EB transmission path in the FMB sketch and gave it to P.W-3. The transaction was witnessed by the shadow witness P.W-5. After receiving the application and the sketch, P.W-3 came out and gave the pre-arranged signal to the trap team. The trap team led by the P.W-13 Mr.Satish, the Inspector of Police DV&AC came and after introducing himself and the trap team, asked A-1 to dip his right hand in the sodium carbonate solution. The solution colour turned light red. The solution was collected in a bottle, sealed and labelled. Similar test was conducted on the left hand. nine notes of Rs.100/- denomination recovered from the shirt pocket of A-1. The numbers in those currencies were compared with the numbers noted in the entrustment mahazar Ex.P-5 and found tallied. The shirt of A-1 was recovered and the pocket portion was subjected to phenolphthalein test. Having found positive, the solution was collected and labelled. About the remaining one currency of Rs.100/- note, on enquiry, A-1 told he had given it to A-2. So, A-2 who was present there was asked to subject himself for phenolphthalein test. Both his hands tested positive. Then, when A-2 was enquired about the money, he took out one currency of Rs.100/- note from his left side pant pocket. The number in that note was compared with the numbers noted in the entrustment mahazar and found tallied. After giving an alternate dress, the pant of A-2 was subjected to phenolphthalein test and found positive. The solutions were collected and labelled. The solutions were forwarded to lab for chemical analysis and found presence of both phenolphthalein and sodium carbonate. The test report is marked as Ex.P-20. The remnant solutions are marked as M.O.4 to M.O 9.

4. Conclusion of the Trial Court:-

The Trial Court, on appreciating the oral evidence of P.W.1 to P.W.14, documents marked as Ex.P-1 to Ex.P-22 and Material objects marked as M.O.1 to M.O 11, held the prosecution case is proved.

5. Being aggrieved by the conviction and sentence, the above appeal is filed by the appellants stating that the Trial Court failed to properly appreciate the

evidence and the prosecution failed to produce acceptable legal evidence to prove the demand of illegal gratification as well as acceptance of the same. Mere recovery of the tainted currency from the accused persons will not lead to a presumption that the money was obtained by them as illegal gratification as reward or motive to discharge their official function, The Trial Court failed to consider that, neither A-1 nor A-2 are persons competent to mark the transmission line in the FMB sketch. Therefore, the allegation that, to mark the transmission line in the FMB sketch, A-1 demanded illegal gratification of Rs.1000/- as reward ought to be false.

6. Submission made on behalf of the appellants:-

The Learned Counsel for the appellants contended that the application of the defacto complainant P.W.3 given for EB connection is marked as Ex.P.7. The Trial Court failed to note that there is no signature of the EB official or seal of the EB department in the said application to indicate that it was submitted in the EB office on the date mentioned by the complainant. There is no indication in the application that, it was returned for not accompanied with FMB sketch with marking of EB transmission line in it. Therefore, the very fundamental fact required to prove that, there was demand of bribe to mark EB transmission line in the FMB sketch failed.

7. The Learned Counsel for the appellants further submitted that the Trial Court failed to note that, admittedly, P.W.3 had met the accused, earlier on 03/06/2008 and 04/07/2008 and got no objection certificate and ownership certificate respectively. On those days, A-1 have not demanded any illegal gratification as a reward or motive to give those certificates. While fact being so, it is illogic that, he demanded Rs.1000/- from P.W.3 on 25/08/2008.

8. In respect of A-2, the Learned Counsel for the appellant submitted that there is no allegation against A-2 that, he demanded illegal gratification from P.W-3. The case against A-2 is that, he was present when P.W.3 gave bribe of Rs.1000/ - to A-1 and A-1 took Rs.100/- and gave it to A-2. Thus, A-2 knowingly received part of the bribe money through A-1. This conclusion of the Trial Court is absolutely without any material evidence. It is well settled principle of law that, demand is *sine quo non* for prove of charge under Section 7 of P.C Act, 1988. Mere recovery of marked currency from the possession of the accused is not a

proof for demand or obtainment of illegal gratification. The prosecution case is not that, A-2 demanded bribe or received bribe from P.W.3. Their case is that, P.W.3 gave Rs.1000/- to A-1. A-1 and from that Rs.1000/-, A-1 gave Rs.100/- to A-2. Mere recovery of Rs.100/- note smeared with phenolphthalein and entrusted to P.W-3 during the pre trap proceedings is not a proof that the money is the legal gratification obtain as reward or motive to satisfy the ingredients to attract either Section 7 or Section 13(1)(d) of P.C Act, 1988.

9. It is also contended by the learned counsel for the appellants that there is no independent evidence to corroborate the evidence of P.W.3 regarding demand and acceptance of bribe. Mr.Manickam examined as P.W-5 is the Shadow witness and he is not a reliable witness. The Investigation officer has not produced any document to show that, he made a written request to the Higher Official of P.W.5 to spare a service of P.W.5 to be a shadow witness in the trap proceedings. The presence of P.W-5 at the time of trap is highly doubtful since he has not corroborated the evidence of the Trap Laying Officer P.W-13 regarding the seizure of tainted currency from A-2 and the conduct of phenolphthalein test at the hands and pant pocket of A-2.

10.Submission on behalf of the Respondent/State:-

Per contra, the Learned Government Advocate (Crl.Side) for the respondent submitted that the factum of demand and acceptance of illegal gratification is proved through the defacto complainant P.W.3 and the shadow witness P.W.5. That apart, the P.W-4, who is the Foreman of the Electricity Board was examined to prove that he received the application of P.W.3 seeking connection for his newly constructed house. He, after examining the application, gave it back to P.W.3 to get the Ownership Certificate from VAO (A-1) and the FMB sketch with the marking of the EB transmission line. Therefore, it is incorrect to argue that, there is no application at all presented to the EB office by P.W.3. Further, Learned Government Advocate (Crl.Side) also contended that the application, the FMB sketch and other annexed documents were with the A-1 till he gave it P.W-3 after receiving the bribe. The Learned Government Advocate submitted that, nine hundred rupees notes smeared with phenolphthalein and entrusted to P.W-3 earlier in the day was received and kept in the shirt pocket by A-1, after giving hundred rupees to A-2, who kept it in his pant pocket. The marked currencies were recovered from A-1 and A-2 under the seizure mahazar prepared during the trap conducted at VAO office during the later part of the day. The test conducted at lab, found presence of phenolphthalein - sodium carbonate is a corroboration to the oral evidence of the prosecution witnesses.

11. The learned Government Advocate (Crl.Side) for the respondent therefore submitted that, the accused had suggested to the prosecution witnesses that the tainted money was forcibly kept in the pocket of A-1 at that time, one note slipped on the floor and that was taken by A-2 innocently. If this suggestion is to accepted, A-2 ought not to have kept that hundred rupees in his pant pocket. The remaining nine notes found in A-1's (VAO) shirt pocket stand unexplained. The presence of phenolphthalein in the shirt wash of A-1 (VAO) and pant wash of A-2 (VA) in the sodium carbonate solution sent for chemical analysis belies the appellants version.

12. Heard the Learned counsel for the appellants and the Learned Government Advocate (Crl.Side) for the State/respondent.

<u>The point for consideration:-</u>

*Whether the prosecution P.W.3, P.W.5 and P.W.13 besides the chemical analyst report and other evidence had proved the demand and acceptance of illegal gratification by A-1 (VAO) and his sharing with A-2 (VA)?*

13. To prove the charges, the prosecution had examined 14 witnesses, marked 22 exhibits and 11 material objects. In defence, the accused had not relied on any oral or documentary evidence but had put forth the defence theory through cross examination of the prosecution witnesses.

14. A-1 V.Rajendran is the Village Administrative Officer (VAO) of Kaveripattinam–II, Krishnagiri Taluk. and A-2 K.Govindasamy is his Village Assistant. Both the accused are public servants as defined under Section 2C of the Prevention of Corruption Act, 1988. There is no dispute about this fact. On 28/08/2008, A-1 and A-2 were present in the office of VAO, Kaveripattinam when the trap operation took place, P.W.3 Pownraj, a resident of Kaveripatttinam Village had constructed a house and had sought for electricity service connection from T.N.E.B. Ex.P.7 is the application seeking electricity connection. This

application along with other documents were recovered during the trap proceedings under recovery mahazar marked as Ex.P.6. This application which is marked as Ex.P.7 indicates that, it was signed by P.W.3 on 02/07/2008. Along with the application, a) a printed affidavit Form signed by him, b) a certificate dated 30/06/2008 signed by A-1 indicating that there is no objection to provide EB service connection to the house of P.W.3, c) the recommendation of the Village Panchayat President saying no objection. d) House tax receipt, e) FMB sketch with the marking of electricity transmission line. f) a certificate by A-1 dated 04/07/2008 confirming that the said house is owned by P.W.3 and an Agreement deed between the owners of the said property including PW-3 are found enclosed.

15. The specific case of the prosecution is that for the marking of EB transmission line in the FMB sketch A-1 (VAO) demanded Rs.1000/- and on 28/08/2008, after receiving the bribe money, he marked the transmission line on the FMB sketch, A-1 (VAO) gave it to the defacto complainant P.W.3. The perusal of FMB sketch shows that there is a marking indicating the transmission line. It is not the case of the first accused that the said marking was not made by him. His defense is that, he is not competent or authorised to mark the EB

transmission line in the FMB sketch. If that is true, then A-1 is bound to explain why he marked the FMB sketch. Having not denied the marking of the transmission line in the FMB sketch, the plea of the A-1 (VAO) that, he is not competent to mark EB transmission line in the FMB sketch or there is no proof for P.W.3 submitting application to EB for service connection for his house is to be rejected as a lame defence contrary to the documentary evidence and oral evidence. The Trial Court has rightly declined to accept the said defence raised by A-1 regarding his competency and obtainment of bribe money as reward to mark the EB transmission line.

16. No doubt, A-1 (VAO) is not accused of demanding bribe on the earlier occasions when he gave the 'No objection certificate' dated 30/06/2008 and the ownership certificate dated 04/07/2008, this will not rule out the possibility of demanding bribe when he was asked to mark the EB transmission line in the FMB sketch. Law requires, the demand of illegal gratification is a foundational fact and the prosecution has to prove it in the manner known to law. In this case, P.W.3 had spoken about the demand by A-1 and he had lodged the complaint with Vigilance Police on 27/08/2008 at 5.00 p.m. The oral complaint reduced into

writing and registered by P.W.13, the Inspector of Police, Vigilance and Anti Corruption. Thereafter, P.W-13 had requested the BDO Krishnagiri and District Employment Exchange Officer, Krishnagiri to spare an official to oversee the trap proceedings and be witness. Accordingly, Manickam P.W.5 and Elangovan (not examined) had reported before P.W.13 on the same day at 6.00 p.m.

17. It is contended by the Learned Counsel for the appellants that the prosecution has not placed before the Court, the requisition letter to spare official witnesses and the permission granted by the Superior Officials of the respective officials. This argument is placed for the first time in the appeal, P.W-13, in his Chief Examination has positively asserted that he made request to the Senior Officers of the respective witnesses and they reported to him on 27/08/2008. There is no cross examination to impeach this assertion made by P.W.13, the Investigation Officer regarding his request made to BDO and the Employment Exchange Officer to spare an officer to be witnesses to the trap proceedings. Therefore, it is to be presumed that the official functioning as spoken by P.W.13 is in consonance with the procedure laid down in the manual of DV&AC.

18. It is pertinent to note that having accepted the recovery of tainted

money from his possession A-1 has to rebut the presumption that the money was not obtained as illegal gratification. To discharge his onus, A-1 has suggested to the witnesses that the money found in his possession was neither demanded nor accepted but thrusted in his pocket forcible. It is to be note that having accepted the recovery of tainted money from his possession, his theory of forcible implanting does not carry any merit for consideration, when the positive evidence of the prosecution witnesses prove the money received by A-1 been shared with A-2. Out of 10 marked 100 rupees currencies, 9 notes were recovered from A-1 and one note was recovered from A-2. The prosecution case that, A-1 (VAO) received the money from P.W-3 and gave one note to A-2 (VA) and kept the balance 9 notes in his left side shirt pocket is proved beyond doubt through P.W-2, P.W-5 and P.W-13. Besides, the Chemical Analyst report Ex.P-20 and the testimony of P.W-14, the Scientific expert. The certificates found annexed to the application Ex.P.7, the marking of electricity transmission line on the FMB sketch made by A-1 (VAO) after obtaining the bribe money are suffice to confirm the judgment of the Trial Court which has held A1 (VAO) guilty of offences under Section 7 and 13 (2) r/w 13(1)(d) of P.C Act, 1988.

19. As far as A-2 (VA) is concerned, the charge against him is that, he

received Rs.100/- from A-1, who demanded bribe and obtained it from P.W-3. It is not the case of the prosecution that, A-2 (VA) jointly demanded bribe with A-1 (VAO) or he demanded bribe from P.W-3 independently. The evidence placed before this Court is to the effect that, A-2 (VA) received Rs.100/- from A-1. The money was offered by A-1 (VAO) from the Rs.1000/-, he obtained from P.W-3. Whether the money was given as a share in the illegal gratification or for any other purpose is not clear and the prosecution has not placed any evidence to proved that it was the share of A-2 (VA) in the bribe money. For A-2 (VA), the dictum that mere recovery of tainted money without proof of demand will not render the accused guilty of offence under Section 7 or 13(1)(d) of P.C Act, 1988, will squarely apply. Therefore, the benefit of doubt as to be extended to A-2.

20. Therefore, the conviction and sentence imposed on A-1 V.Rajendiran, Village Administrative Officer by the Trial Court is confirmed. The judgement of conviction and sentence imposed on A-2 K.Govindasamy, Village Assistant is set aside.

21. As a result, the first appellant in the ***Criminal Appeal No.338 of***

***2016 V.Rajendiran (A1) is dismissed.*** The trial Court shall secure the accused person/V.Rajendiran (VAO) and commit him to prison to undergo remaining period of sentence. The period of sentence already undergo shall be set off under Section 428 of Cr.P.C. The period of sentence ordered to run concurrently. The bail bond executed, if any, shall stand cancelled.

22. As far as, the second appellant in the ***Criminal Appeal No.338 of 2016 K.Govindasamy (A2) is allowed.*** The appellant is set at liberty. Fine amount paid if any by the accused, shall be refunded to him. Bail Bond if any executed by the accused shall stands discharged.

15.06.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
bsm
To:
1.The Chief Judicial Magistrate/Special Judge, Krishnagiri.
2.The Deputy Superintendent of Police, Vigilance and Anti Corruption, Krishnagiri District.
3.The Public Prosecutor, High Court, Madras.

**DR.G.JAYACHANDRAN,J.**

bsm

Pre-delivery judgment made in
Crl.A.No.338 of 2016

15.06.2023