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Crl.A.No.435 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2023

Pronounced on : 18.05.2023

CORAM

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

Criminal Appeal No.435 of 2016

E.Gajendran

... Appellant/accused

/versus/

State:

The Inspector of Police,
Vigilance and Anti-corruption
City-II Department,
Nandanam, Chennai-35.
(Crime No.9/AC/2009/CC-IV)

... Respondent

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to set aside the order of conviction dated 06.06.2016 made in Special Case No.15 of 2011 on the file of Special Judge and Chief Judicial Magistrate, Tiruvallur and acquit the appellant.

For Appellant : Mr.V.Krishnamoorthy

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



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JUDGMENT

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On 17/08/2009, the *de facto* complainant, Mr.Murali and his family members applied for separate patta after they effected partition of their joint family property. In this connection, on 03.09.2009 Murali met the appellant, who was working as Firka Surveyor, at Poonamallee at the relevant period and enquired about the status of the applications. The appellant demanded Rs.5,000/- as gratification for processing the patta transfer applications. The *de facto* complainant requested the appellant to reduce the bribe claim and the appellant obliged by reducing it to Rs.3,000/- and told the *de facto* complainant to bring the money on 08.09.2009.

2. The *de facto* complainant was not interested in giving bribe to get the patta, so he consulted his friend and got the address of the Vigilance office. On 07.09.2009, he went to the Vigilance office at Nandanam, Chennai and gave a written complaint about the demand of bribe by the Firka Surveyor, Poonamallee to do his official duty. A case in crime No: 09/AC/09/CC-IV dated 07.09.2009 was registered and taken up for investigation. Two witnesses P.Mayandi and K.Sellamani, both working as Assistants in Agricultural Engineering Office were requested to be shadow witnesses for the trap



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proceedings. At about 09.45 am on 08.09.2009, pre trap proceedings, such as demonstration of the sodium carbonate- phenolphthalein test and the entrustment of the bribe money smeared with phenolphthalein powder to the *de facto* complainant Murali was completed and the Entrustment Mahazar was prepared. Thereafter, the trap team headed by Arulselvan, Inspector of Police (PW-10) proceeded to Poonamallee, Thasildar office.

3. The *de facto* complainant and the shadow witness Mayandi reached the Thasildar Office at about 11.30 am. The accused was not in his seat. On enquiry they came to know that he had gone to Varadarajapuram on duty and will be back only afternoon. Hence, they waited for the accused in the portico of the Thasildar office. At about 14.30 hrs, the accused came and the *de facto* complainant met him in the portico. When the accused enquired the *de facto* complainant whether he has brought the money he demanded, the *de facto* complainant took out the tainted 6 notes of 500 Rupees denomination and gave it to the accused. The accused received it with both his hands, counted and then kept it in his shirt left side pocket. After giving the bribe of Rs.3,000/- , the *de facto* complainant and the shadow witnesses came back. On receipt of the pre arranged signal from the *de facto* complainant, the trap team waiting



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outside, rushed inside the building. On being identified, the accused was taken to the office of the Thasildar located in first floor of the building.

4. In the presence of the Deputy Inspector Jeevanantham and Head Quarters Deputy Thasildar Tmt.Renuga, the accused was interrogated by the Inspector Arulselvan. The accused hands and shirt were subjected to sodium carbonate test by dipping it in the colour less solution of sodium carbonate prepared separately. On the dip of the hands and the shirt pocket portion, the colourless solution turned light red. Confirming that the accused has handled the phenolphthalein smeared currencies, the accused was asked to hand over the money. He took, the money from his shirt pocket and handed over the 6 notes of Five hundred rupees currencies to the Inspector. The numbers found in those notes were compared with the numbers noted in the Entrustment Mahazar and they tallied. From the table of the accused, the files relating to the patta transfer applications were recovered. A copy of the documents duly attested by the Deputy Inspector Jeevanantham were recovered under the mahazar.

5. The solutions collected during the trap proceedings were sent to the chemical analysis and found presence of both phenolphthalein and sodium



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carbonate. After getting the sanction to prosecute, the final report was filed and taken cognizance by the Special Court for trial of cases under Prevention of Corruption Act.

6. Charges under Section 7 and section 13(2) r/w 13 (1)(d) of P.C.Act were framed and the accused was tried. To prove the charges, the prosecution relied on 12 witnesses, 27 documents and 5 material objects.

7. The Trial Court held both the charges proved and sentenced the accused to undergo one year Rigorous Imprisonment with fine of Rs.1,500/-, in default 3 months Simple Imprisonment for the offence u/s 7 of P.C.Act. Sentenced to undergo 2 years RI with fine of Rs.1,500/- in default 3 months SI. The period of sentence ordered to run concurrently and the period of imprisonment already undergone was ordered to be set off.

8. The aggrieved accused has preferred the appeal for the following reasons:-

a) The trial court has failed to note that the sanction to prosecute Ex.P1 does not speak about how PW-1 is competent



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to accord sanction. The failure to prove his authority to remove the accused from service renders the Sanction Order-Exhibit P1 is invalid. Therefore, the entire prosecution is vitiated for want of valid sanction.

b) The accused who is working as Firka surveyor is a field officer and he will be in the office only after completion of his field visit. On 03.09.2009, the alleged date of first demand, the accused reached the office only at about 5.00 p.m. Therefore, the allegation of the *de facto* complainant that on 03.09.2009 at about 11.00 am in the office of the Thasildar, the accused demanded bribe of Rs.5,000/- and later, reduced to Rs.3,000/- ought not to have been believed by the Trial Court.

c) The tainted money was forcibly put in the pocket of the accused on 08.09.2009, when he returned to the office at 2.30 p.m., after completing his field visit. Mere recovery of tainted money is not a proof for demand or obtainment of illegal gratification.

d) Regarding the shadow witness, it is contended that there is no document to show that the official witnesses were



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called by the trap laying officer through the Superior Officers of the shadow witnesses. At the time of registering the FIR on 07.09.2009 at about 18.00 hours, PW-2 had deposed that these official witnesses were present. The prosecution has failed to explain how the official witnesses were procured after the working hours.

e) It is further contended that the trap laying officer before registering the FIR had not made any preliminary enquiry about the veracity of the complaint and the credential of the accused.

9. In addition to the grounds raised and extracted above, the learned counsel appearing for the accused/appellant submitted that there is a patent error and contradiction in the case of the prosecution regarding the scene of crime. While PW-2 had deposed that money was received from him by the accused in the portico of the Thasildar Office, the shadow witness, who was examined as PW-3, says that the money was received in the office of the Thasildar located at the first floor of the building. This is a material contradiction, which renders the case of the prosecution unbelievable.



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10. The counsel also submitted that the sketch prepared in respect of the scene of crime does not disclose the position of the witnesses. PW-3, the shadow witness had deposed that on arrival of the accused to the office at about 2.30 pm, he along with PW-2 went with the accused to his office at first floor. Accused enquired whether he has brought Rs.3,000/- as demanded, whereas the sketch Marked as Ex.P-11, as well as the testimony of PW-2 and the trap laying Officer-PW-10 indicate that the money was received by the accused in the ground floor northern corner of the portico. The shifting of the scene of crime in this case renders the evidence of PW-3, the official witness doubtful and unreliable.

11. Per Contra, the learned Counsel representing the State submitted that the sanction to prosecute, which is marked as Ex.P-1 is self-explanatory. It clearly discloses the application of mind. PW-1, being the Assistant Director of Survey and land records, Tiruvallur District is competent to remove Firka surveyors. His competency and the subjective satisfaction to grant sanction to prosecute is explicitly recorded in Ex.P-1 and also spoken by the witness. Therefore, the sanction order is valid and no defect in it.



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12. Regarding the presence of witness on the day of complaint, the learned Government Advocate (Crl.Side), by reading the relevant portion of the PW-2 and PW-3 testimony submitted that after receiving the complaint, Ex.P-2, the trap laying officer had requested PW-3 and Sellamani to come over to the Vigilance Office and they were present at about 6:30 p.m. After explaining to them the nature of the complaint, they were asked to come on the next day and accordingly, they were present on 08.08.2009. PW-3 was examined in chief on 03.01.2012 about three years after the occurrence. Hence, it suffers minor contradiction, however, the said contradiction is natural and not fatal to the case of the prosecution.

13. Consistently, the witnesses PW-2 and PW-10 as well as the documents show that the accused received the money in the portico and the trap team, which came immediately, took the accused to the first floor where the Thasildar office is located. In the presence of the Deputy Headquarter Thasildar and Deputy Inspector, search was conducted after conducting phenolphthalein-sodium carbonate test. This is clearly recorded in the recovery mahazar, which is marked as Ex.P-5. During the said process, apart from the official witnesses, the officers of Thasildar office were also present



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and they are signatories to the seizure mahazar. A copy of the Ex.P-5 given to the accused and he has acknowledged the receipt of the same. Hence, the learned Government Advocate (Crl.Side) submitted that the appeal is devoid of merits, hence to be dismissed and the judgment of the trial Court to be confirmed.

14. Heard the counsels. Records perused. The point for consideration in this appeal is whether the grounds raised by the appellant is sufficient to rebut the statutory presumption under the P.C. Act.

15. Learned counsel appearing for the appellant contended that there is a defect in the order sanctioning prosecution. However, as pointed out by the learned Government Advocate (Crl.Side), the reading of Ex.P1 and the testimony of PW-1, indicate that the sanction order given by the person competent to remove the accused and he had granted sanction to prosecute after perusing the relevant documents and being satisfied about the *prime facie* material against the accused.



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16. Regarding the presence of official witnesses on the day of complaint,

a day prior to the trap and the plea that for the complaint registered at 6.00 p.m., the arrival of official witnesses at 6.30 p.m., after the working hours is improbable, it is to be noted that it is not an hard and fast Rule that staff should leave the office immediately after the office hours or it is so in general practice. It is the surmise of the accused and not a Rule of evidence. The presumption or inference claimed to be drawn that no one will be in the office after office hours not based on any rule of evidence or prudence. Therefore, the testimony of PW-3 that he was present at his office after 6.00 p.m., on 07.09.2009, when PW-10 called him to come to the Vigilance office to be a shadow witness cannot be rejected for the above reason canvassed by the accused. Likewise, the contention of the appellant that he used to come to the office late in the afternoon after completing the field visit is also only an assertion by the accused, but not based on the evidence. In the absence of evidence, that on 03.09.2009 at about 11.00 a.m., he was not in the office, it is to be presumed that public servants are expected to be present in the office during the working hours unless contrary is proved. It is not the case of the accused that he did not attend the office on 03.09.2009, his contention in the grounds of appeal is that there is no proof for his presence in the office on



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03.09.2009. Such contention can be countenanced only if the accused has produced any evidence to that effect. Without evidence, plea taken as a ground in the appeal is not worthy for consideration. Similarly, the contradiction in the PW-3 evidence that the accused received the money in the office room located at first floor does not make the prosecution case unbelievable. The evidence of PW-2, PW-10 and PW-4 and PW-5 clearly show that the accused was taken to the office of the Tahsildar located in the first floor of the building and in the presence of witnesses mentioned above, the tainted money was recovered from the accused, after conducting sodium carbonate test.

17. On the assessment of the evidence, it is clear that the prosecution has proved beyond doubt that the accused has demanded illegal gratification to process the applications for transfer of Patta given by the *de facto* complainant and family members. The Exs.P16 to Ex.P27, which are the documents found in the file pertaining to the applications given by the *de facto* complainant family members go to show that, the applications with necessary fees submitted on 17.08.2009. It was withheld by the accused expecting gratification and on his demand made on 03.09.2009, the *de facto* complainant has offered him Rs.3,000 on 08.09.2009. The accused has



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accepted it and got caught red-handed by the trap team of Vigilance Department.

18. Thus, the case of demand and acceptance duly proved by eye witnesses and the scientific evidence. This Court finds no error in the finding of the trial Court convicting the accused for the offence under sections 7 and 13(1)(d) of P.C.Act.

19. In the result, the Criminal Appeal No.435 of 2016 is dismissed. Trial Court judgment is confirmed. The trial Court is directed to secure the accused and commit him to prison to undergo the remaining period of sentence. Bail bond shall stands cancelled.

18.05.2023

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

1.The Special Judge and Chief Judicial Magistrate,
Tiruvallur.

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



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City-II Department, Nandanam, Chennai-35.

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

Dr.G.JAYACHANDRAN.J.,



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Pre-Delivery Judgment made in
Criminal Appeal No.435 of 2016

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