IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.04.2023	Pronounced on : 19 .05.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.498 & 573 of 2016

V.Selvaraj, ... Appellant/Accused No.1
in Crl.A.No.498 of 2016

/versus/

State represented by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri.
Crime No.6/AC/2006/DP. ... Respondent/Complainant
in Crl.A.No.498 of 2016

Prayer in Crl.A.No.498 of 2016: Criminal Appeal has been filed under Section 374(2) of Cr.P.C read with Section 27 of Prevention of Corruption Act, 1988, pleased to set aside the order of conviction dated 30.06.2016 passed in Special C.C.No.60 of 2008 on the file of the Learned Chief Judicial Magistrate, (Special Judge), Krishnagiri and acquit the appellant and pass such further orders.

For Appellant in Crl.A.No.498 of 2016 : Mr.B.Kumar, Senior Counsel, for Mr.S.Anbalagan

For Respondent in Crl.A.No.498 of 2016 : Mr.S.Udaya Kumar Government Advocate, (Crl.Side)

Venkatramanappa @ Venkatraman (Deceased)

V.Sivananda,
S/o.Venkataramanappa (Late) ... Appellant/Accused No.2 in Crl.A.No.573 of 2016

Substituted due to the death of the appellant as per order dated 24.04.2023 in Crl.M.P.Nos.5832 & 5833 of 2023 in Crl.A.No.573 of 2016

/versus/

The State Represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri.
Crime No.6/AC/2006/DP. ... Respondent/Complainant in Crl.A.No.573 of 2016

Prayer in Crl.A.No.573 of 2016: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to set aside the conviction and sentence imposed on the appellant/2nd accused in Special C.C.No.60 of 2008 on the file of the Learned Chief Judicial Magistrate (Special Judge), Krishnagiri, dated 30.06.2016.

For Appellant in Crl.A.No.573 of 2016 : Mr.K.Sathish

For Respondent in Crl.A.No.573 of 2016 : Mr.S.Udaya Kumar Government Advocate, (Crl.Side)

COMMON JUDGMENT

The Chief Judicial Magistrate Krishnagiri in Spl.S.C.No.60 of 2008 held the accused Selvaraj (A1) and Venkatramanappa @ Venkatraman (A2) guilty of offence under Section 7 of P.C Act and 13(2) r/w 13(1)(d) of P.C. Act, for demand and receipt of illegal gratification of Rs.1500/- from the defacto complainant Rajinikanth on 27.09.2006 for giving electricity service connection.

2. The trial Court convicted A1 and A2 for offence under Section 7 of P.C and sentenced them to undergo 6 months R.I and fine of Rs.1000/-, in default one month S.I. Convicted and sentenced both the accused to undergo one year R.I and fine of Rs.1000/- in default one month S.I for offence under Section 13(2) r/w 13(1)(d) of P.C. Act.

3. The case of the prosecution is that, Dhimarayan own agricultural land to an extent of 58 cents in S.No.743/7 at Varaganapalli, Nagamangalam Post, Thenkanikottai Taluk, Krishnagiri. He applied for electrical service connection under self finance scheme on 16.09.2004 and paid Rs.500/-. On 05.09.2012, on receipt of demand notice from TNEB, he paid balance Rs.24,500/- and arranged all

required logistics for providing service connection. His son Rajinikanth the defacto complainant informed about the readiness to Selvaraj (A1), who was serving as Junior Engineer. On 08.09.2006, he requested 1st accused to provide meter for electricity power. 1st accused informed that, service will be provided only on seniority basis. On 23.09.2006, the defacto complainant again approached Selvaraj (A1), at that time A2, was also present and they both jointly demanded from the defacto complainant Rs.1500/- to give service connection. The defacto complainant was not inclined to pay illegal gratification, have gave written complaint to the Inspector of Police, Vigilance and Anti Corruption, Special Unit, Krishnagiri. After verifying the credential of the complaint, the Inspector arranged trap. On 27.09.2006 at 07.15 hours, the team led by Trap Laying Officer Mr.C.Rajesh, Inspector of Police along with two official witnesses Kiruban and Sakarapani proceeded to the Office of the accused at 12.20 hours. A2 Venkatramanappa @ Venkatraman, the Commercial Inspector demanded and accepted illegal gratification of Rs.1500/- on the instruction of A1. The trap team along with Official witnesses entered the Office on receiving the pre-arrange signal. They recovered the phenolphthalein smeared currency of Rs.1500/- from A2. The right hand of Venkatramanappa @ Venkatraman (A2) was tested with Sodium

Carbonate Solution, the colour of the solution turned light red. The shirt pocket portion of A2 was dipped in the sodium carbonate solution, which also turned into light red. A2 confessed to the Inspector of Police about the receipt of Rs.1500/- as illegal gratification on the direction of A1. The connection estimated form signed by A1 on 26.09.2006 was given to A2 with on instruction that only on receiving the bribe amount, the connection estimation form to be forwarded to AEE, Thenikanikottai. The cost estimation form signed by A1 was recovered from A2. A2 was arrested immediately. A1 was not in the Office, he was secured subsequently. The hand wash solution and shirt pocket wash solution of A2 were sent for chemical analysis, the report from the lab proved presence of both phenolphthalein and sodium carbonate.

4. On completion of investigation, final report was filed against the accused. Charges under Section 7 and 13 (1)(d) of P.C Act was framed against the accused and they were tried.

5. To prove the charges, the prosecution examined 16 witnesses, marked 36 exhibits and 7 material objects.

6. The defacto complainant Rajinikanth P.W.2 his father P.W.4 Dhimbarayan had spoken about the submission of application for service connection under the self finance scheme and the payment of Rs.500/- and Rs.24,500/- deposited as per the direction of the Electricity Board.

7. P.W.3 Kiruban, the shadow witness had deposed about the entrustment proceedings presided by phenolphthalein and sodium carbonate demonstration, trap and recovery of phenolphthalein smeared money from A2.

8. The trial Court after appreciating the evidence held the charges are proved against these accused and sentenced them as stated above.

9. Aggrieved by the conviction and sentence, A1 Selvaraj, preferred Crl.A.No.498 of 2016 and A2 Venkatramanappa @ Venkatraman preferred Crl.A.No.573 of 2016, pending disposal of the appeal, Venkatramanappa @ Venkatraman (A-2) died and his son Sivanantha had filed application to get himself impleaded and peruse the appeal. His application was allowed and he is

permitted to contest the appeal. Accordingly, both the appeals were taken up together for disposal under this common judgment.

10. The case of the prosecution is that, for electricity service connection under the self finance scheme, P.W.4 Dhimbarayan paid Rs.500/- on 16.09.2004. On 26.11.2005, P.W.4 received notice from EB calling upon him to pay a sum of Rs.24,500/- on or before 30.12.2005. P.W.4 paid Rs. 25,230/- on 05.12.2008 which is inclusive of 7 months advance payment for the electricity consumption. Even after payment, there was no progress in providing service connection. Therefore, his son Rajinikanth P.W.2 approached A1 Selvaraj and requested him to expidate the process of providing electricity service connection. On 23.09.2006, A1 demanded Rs.1500/- as illegal gratification from P.W.2 for providing electricity service connection. At that time, Venkatramanappa @ Venkatraman (A2) was also present. He assured the defacto complainant that, on payment of Rs.1500/- as illegal gratification, they will arrange fro connection immediately. P.W.2 tried to bargain with A1 & A2 but they refused to provide service connection without getting bribe of Rs.1500/-. They instructed P.W.2 to come with the bribe money on 26.09.2006. P.W.2 went to the EB Office on

26.09.2006 without money and tried to convince A1 and A2 to provide service connection without insisting bribe. However, he failed in his attempt. Therefore, he gave the complaint in writing to the Inspector of Police DV&AC, Krishnagiri and FIR was registered in crime No.6/AC/2006 under Section 7 of P.C. Act against the accused. On 27.09.2006 at 06.00 hours. Rajesh, Inspector of Police, who registered the complaint took up the investigation. Two official witnesses Kiruban (P.W.3) and Sakarapani (not examined) were asked to be shadow witness for the trap proceedings. On 27.09.2006 at the Vigilance Office in the presence of the witnesses, the bribe money of Rs.1500/- was smeared with phenolphthalein and entrusted to P.W.2. Entrustent Mahazar prepared. Then, the trap team went to the Office of the AEE (O & M), TNEB, Kizhamangalam. P.W.2 Rajinikanth was accompanied by P.W.3 Kiruban. At about 12.20 hours, P.W.2 and P.W.3 went to the EB Office at Chettipalli road, A1 was not in his room. A2 was present, on seeing P.W.2, he said A1 has signed the proposal for service connection. He instructed to forward the file to Assistant Divisional Office after receiving the bribe money. A2 showed the file and said if bribe money is given, the file will be forwarded to AD Office. P.W.2 took out from his pocket three x 500 rupees currencies smeared with phenolphthalein and handed over to A2

Venkatramanappa @ Venkatraman. A2 after counting the currency kept it in his pocket and assured that file will be forwarded.

11. P.W.14 Rajesh, Trap Laying Officer, who went to the room soon after receiving the signal from P.W.2, enquired P.W.2 and P.W.3 what transpired between them and A2. After confirming that A2 has received the tainted currency introduction himself to A2 and asked him to dip his hand in the sodium carbonate solution prepared by the member of the team. On dipping his hands, the solution colour turned light red. Having confirmed that, A2 has contacted phenolphthalein smeared currency P.W.4 enquired A2 whether he has received any money from Rajinikanth P.W.2. A-2 admitted the receipt of the money from P.W.2 and took out Rs.1500/- from his shirt left side pocket and gave it to Trap Laying Officer Rajesh. The numbers in those currencies were compared with the numbers noted in the entrustment mahazar and found tallied. Thereafter, the shirt of the accused was recovered and pocket portion was tested with sodium carbonate solution. The colour of the solution turned light red. The shirt was recovered for investigation.

12. A2 when enquired about reason for receiving money from P.W.2, he confessed that for forwarding the application to AD office, to get connection, he and A2 demanded Rs.1500/- as illegal gratification. A1 who was on field duty on 27.09.2006, signed the form on 26.09.2006 and handed over the form to A2 to withhold it from forwarding to AD office till P.W.2 give the bribe money of Rs.1500/-. The registers were recovered under the mahazar, the solution of hand wash and shirt wash of the accused collected in the bottle and duly labelled were forwarded for chemical analysis. On receipt of the analysis report, confirming presence of phenolphthalein and sodium carbonate, final report filed by P.W.16 Nachiappan, after obtaining the sanction to prosecute the accused persons from P.W.1.

13. The conviction and sentence is challenged by A1 Selvaraj on the ground that, the tainted currency was recovered only from A2 and he alone demanded money from P.W.3 on 26.09.2006. The exculpatory statement of A2 implicating A1 ought not to have been relied by the Courts below. Admittedly, on the day of trap A2 was not present in the office. The alleged earlier demand of bribe by A1 in the presence of A2 not corroborated by any evidence except the self

serving statement of P.W.2. In the absence of direct or circumstantial evidence regarding demand, A1 cannot be convicted based on the presumption without proving the foundational fact. Having already signed the proposal, it is A2 who has withheld the proposal from forwarding it to AD office and not A1. Unfortunately, the Court below erred in relying the statement of A2 as a basis for convicting A1. P.W.2 admits that he met A1 nearly 20 times but A-1 did not demand any gratification at that time. If the demand of bribe by A-1 on 23.08.2006 and told P.W.2 to bring the money on 27.08.2006 was true then, A1 would have definitely attended the office to collect the bribe money. The statement of A2 that, he has collected the bribe money from P.W.2 on the instruction of A1 is not corroborated by shadow witness P.W.3. Having signed the proposal even before the trap, the accusation that waiting for bribe money, the accused did not process the file miserably fails. The trial Court failed to take note of this fact.

14. The Learned Counsel appearing for the legal heirs of the deceased Venkatramanappa @ Venkatraman (A2) submitted that, the sanction to prosecute is defective and without authority P.W.14 to P.W.16 had conducted investigation without authorisation. The prosecution has failed to place before the Court, the

foundational fact required for proving demand of illegal gratification. The evidence of P.W.2 who is the defacto complainant and the evidence of P.W.3, the shadow witness does not corroborate each other in respect of demand and obtainment of illegal gratification at the time of trap.

15. According to the Learned Counsel appearing for the appellants the application for service connection under the self finance scheme been considered based on the seniority and there is no question of out of turn priority to any applicant. In case of P.W.4, his application was duly considered and when his seniority fell due, he was called upon to pay the balance registration fees and service connection was provided soon after ensuring that he has made all necessary requirement for getting service. Based on availability of meter, connection will be provided. The seniority ledger, would show that, there was no delay or favouritism in the case of the application given by P.W.4 and persuaded by P.W.2.

16. The Learned Public Prosecutor appearing for the respondent in response to the submissions made by the appellant submitted that, P.W.8, Jayabal, Assistant Executive Engineer at Thenkanikottai at the relevant point of time had

explained the process how the application for electricity service under the self finance scheme considered. As per the seniority, materials will be allocated and for fixing the meter box and wiring, separate permission from Assistant Executive Engineer to be obtained. Once permission is granted by AEE for fixing the meter box, service connection will be provided. Before that, the applicant should keep the premises ready for service. P.W.4 had applied under the self finance scheme and initially paid Rs.500/- (Ex.P.3). Thereafter, the estimation was prepared as soon as his turn become due. According to P.W.9 Murali referring the readiness register (Ex.P.9) had deposed that, P.W.4 name find place on the top of page 24. The Learned Government Advocate submitted that, for exercising the official function, A1 & A2 had demanded illegal remuneration as a motive and therefore, the trial Court had rightly convicted them.

17. The Point for consideration is whether the appellants herein had demanded Rs.1500/- on 23.09.2006 and obtained illegal gratification on 27.09.2006.

18. The point which requires consideration and scrutiny is recovery of

tainted money from the possession of A2 Whether A-2 received it as illegal gratification for himself or for himself and A1. For the said purpose, first it has to be decided whether Rs.1500/- was recovered from A2 and whether it is a illegal gratification other than legal remuneration.

19. From the cross examination of prosecution witnesses particularly P.W.2, P.W.3 and P.W.14, the recovery of M.O.1 of Rs.1500/- from the possession of A2 not been impeached. In addition, the phenolphthalein test which has proved positive also prove the fact that the currency entrusted to P.W.3 during the pre-trap proceedings had found the way to A3 at the time of trap. The receipt of money on demand by A1 also spoken by P.W.2 and P.W.3 who have witnessed the receipt of the money. Soon after the recovery, A2 has stated that, this money was received by him on the instruction of A1.

20. The Learned Senior Counsel appearing for A1 would submit that, this statement of an accused implicating a co-accused is not sufficient to convict A1, who was not present in the office at the time of trap and admittedly on that day, he did not make any demand. Regarding the earlier demand dated

23.09.2006, the Learned Senior Counsel appearing for A1 submitted that, for the said alleged demand, there is no evidence whatsoever except the testimony of P.W.1 which lack corroboration.

21. On perusal of the complaint which is marked as Ex.P.6. The first demand of illegal gratification emanated only from A1 on 23.09.2006. At that time, A2 was present and also endorsed the demand of A1. The evidence of the official as well as the readiness register, priority register all indicates that P.W.4 name finds top of the list and he is due to get service connection. In spite of that, the papers not been processed. No doubt A1 has signed the file with date as 26.09.2006 but had not forwarded it to A.E.E and kept it in his possession permitting A2 to show the file to P.W.2 to convince him that A1 has already signed the file and once bribe is paid, the file will be forwarded.

22. This Court, on perusing the communication of the EB Department which is marked as Ex.P.1 find that, P.W.4 in fact registered for service connection on 09.08.1990 about 15 years prior to the incident. Having made him to wait for 15 years and receiving Rs.25,000/- under the self finance scheme, still the accused

A1 & A2 had no intention to provide service connection to P.W.4 without getting bribe. P.W.2 who had been processing the file had deposed that, atleast 20 times he visited the EB office but he could not get things done and ultimately, A1 has disclosed his intention why he is delaying the process and only after the said disclosure P.W.2 had realised that A1 is expecting illegal gratification and without greasing him, he will not get the service connection, even though the name of his father is top in the priority list. Having forced to that corner, he has given the complaint to DV & AC, Krishnagiri and they have taken the investigation and proceeded with laying trap.

23. Absence of A1 Selvaraj, on the day of trap does not create any doubt in the case of the prosecution since having signed the file on 26.09.2006 instead of forthwith forwarding it to the A.E.E for further action, he has retained the file with him and had instructed A2 to do so after receiving the bribe money. The evidence of P.W.8 who has explained the procedure indicates that only on reaching the zone of consideration, balance amount of Rs.24,500/- is sought to be paid. In this case, P.W.4 has paid balance of Rs.24,500/- on 05.12.2005 along with advance consumption charge of Rs.730/-. While so, till 26.09.2006 for nearly

9 months, A1 has not processed the file and only after making P.W.2 realise that, he will not get service connection without giving bribe and expecting that he will come with bribe money, A1 has signed the file and asked his accomplices to receive the money and forward it orelse not to forward it. There is no reason to disbelieve the version of A2 who had spoken the truth soon after he was caught red handed.

24. For the above said reason, this Court finds the judgment of the trial Court has to be confirmed and Criminal appeals deserve to be dismissed. Accordingly, the Criminal Appeal Nos.498 & 573 of 2016 are dismissed. The trial Court directed to secure the accused persons and commit them to prison to undergo the remaining period of sentence.

19.05.2023

Index :Yes.
Internet :Yes/No.
Neutral Citation :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,
Dharmapuri.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery common judgment made in
Crl.A.Nos.498 & 573 of 2016

19.05.2023