IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.06.2023	Pronounced on: 15.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.168 of 2020

S.M.Anbumani. ... Appellant/Sole Accused

/versus/

State Rep. by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode V & AC.
(Crime No.17/AC/2008 ER). ... Respondent/Accused

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to set aside the conviction imposed in judgment dated 28.02.2020 made in Special C.C.No.12 of 2015 on the file of the Chief Judicial Magistrate/Special Judge, Erode, by allowing this Criminal Appeal.

For Appellant : Mr.S.Vijaya Kumar, Senior Counsel
for Mr.J.Melwin Jabaz

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

JUDGMENT

The appellant is a public servant working as Revenue Inspector in Arachalur Firka, Erode District was trapped by the Vigilance Police on 06.11.2008 at about 17.25 hours when he accepted a bribe of Rs.300/- in the veranda of Revenue Inspector Office, Arachalur from M.Mahalingam to issue migration certificate for his three daughters and one son.

2. The trial Court convicted the appellant and sentenced him to undergo 1 year R.I and to pay fine of Rs.5000/- in default 1 month S.I for the offence under Section 7 of Prevention of Corruption Act and sentenced to undergo 1 year R.I and to pay fine of Rs.5,000/-, in default one month S.I for offence under Section 13(2) r/w 13(1)(d) of P.C Act. Both the sentences are ordered to run concurrently. The period of incarceration if any already undergone by the accused ordered to be set off.

3. The case of the prosecution as found in the final report is that, M.Mahalingam a retired employee of Hindustan Photo Films Limited, Ooty, on his retirement, shifted his family from Ooty to his native at Arachalur, Erode District.

To get migration certificate for his children and re-register their names in the Erode Employment Office by transferring their names from Ooty Employment Exchange, he submitted four applications before the VAO of Arachalur Village on 17.10.2008. On receipt of those applications, the details were recorded in the Register and acknowledgement slips for the receipt of the applications were handed over to M.Mahalingam with an instruction to present the applications before Tr.S.M.Anbumani, Revenue Inspector of Arachalur Firka/the appellant herein for further processing. Thiru.Mahalingam met the appellant on 31.10.2008 at about 11.00 hours and requested to process the application. After making preliminary enquiry, the appellant asked the defacto complainant to get a certificate from Village Administrative Officer Thiru.Mahalingam got it from VAO and gave to the appellant at about 16.00 hours on the same day. At that time, the appellant demanded sum of Rs.500/- as illegal gratification as a motive to process the migration certificate. Thiru.Mahalingam met the appellant again on 03.11.2008, on that day also the appellant reiterated his earlier demand and returned the migration certificate applications to Thiru.Mahalingam with an instruction to get the signature of the applicants and give it back with bribe of Rs.500/-. Without the bribe money, Thiru.Mahalingam submitted the applications to the appellant on

06.11.2008 at about 11.00 hours. At that time, the appellant who reiterated his earlier demand of bribe negotiated with Thiru.Mahalingam and reduced the demand from Rs.500/- to Rs.300/-. Thiru.Mahalingam was not willing to pay any bribe, had preferred the written complaint before the Inspector of Police, Mr.C.Rajesh, Vigilance and Anti-Corruption, on 06.11.2008 at about 13.00 hours.

4. Case was registered against the accused for the offence under Section 7 of Prevention of Corruption Act, 1988. The Trap was organised by the Inspector of Police Mr.C.Rajesh. He took assistance of two official witnesses Mr.Mohamed Hanif, Assistant Director of Chennimalai Jeeva Handloom Weaver's Association and Mr.Prathumnan. In their presence, the demonstration of phenolphthalein and sodium carbonate test conducted. Three notes of Rs.100/- each in denomination smeared with phenolphthalein powder given to P.W.10 with an instruction to give the money to the appellant, if he demands. The pre-trap proceedings were reduced into writing. Then the trap team had left the Vigilance Office and reached Office of the appellant at about 17.00 hours on 16.11.2008. Thiru.Mahalingam, the defacto complainant and Thiru.Mohammed Hanifa one of the official witness met the appellant in his room. On seeing them, the appellant came out of his room and collecting the bribe money in the veranda of his Office and return back to his seat. The trap team, after receiving the pre-arranged signal went to the appellant identified themselves and enquired about the money received by the appellant. After conducting the phenolphthalein test on the figures of both the hands of the accused which proved positive, the currency smeared with phenolphthalein received by the accused was recovered from the right side pant pocket of the appellant. The hand wash solution and the right side pant pocket solution were sent for chemical analysis. The Scientific Officer, Amudha P.W.11, after conducting the chemical analysis, had submitted the report on 17.11.2008 confirming the presence of both phenolphthalein and sodium carbonate in the solutions collected.

5. To prove the case, the prosecution examined 13 witnesses (P.W.1 to P.W.13) and marked 26 exhibits (Ex.P.1 to Ex.P.26) and 6 material objects (M.O.1 to M.O.6). On the side of the defence one exhibit was marked (Ex.D.1).

6. Before the Court, the fact unravelled through witnesses is as below:-

Thiru.Mahalingam, the defacto complainant was examined as P.W.10 In his chief examination, he had deposed about shifting the family from Ooty to his native Village Arachalur, Erode District after his retirement. His four applications submitted to Village Administrative Officer, Arachalur, for migration certificate. He has identified the applications submitted on behalf of his children and those applications are part of the file marked as Ex.P.3 to Ex.P.6. He had deposed that, when gave the applications to VAO Arachalur, the accused made endorsement in the applications and returned it back to first submit it before the Revenue Inspector, get his signature and thereafter submit to the Tahsildar, who is dealing with the migration applications. When the defacto complainant met the Revenue Inspector, he told him to come after 10 days. Again, when he met after 10 days, the Revenue Inspector told him that, he is busy and to come after two days. After two days, when he went and met the Revenue Inspector, he told to meet him after 4 or 5 days. These incidence took place during the year 2008 and he is not aware of the day and month. Since, he was in urgent need of migration certificate for his daughter to get a Government job, he was perplexed and at that time, in a tea shop near the Revenue Inspector office at Arachalur, a man of his age enquired him and told that, he also been driven pillar to post for getting community certificate and advised him to contact a person over phone that person will arrange for issuance of certificate. The said stranger took him to a place which he came to know later, it is a Vigilance Police Office at Karungalpalayam. However, the policeman whom they met was not inclined to help him. So he left the Police Station and went to the nearby tea shop. While he was having tea, the same policeman came and said that, if he need migration certificate urgently to come on the next day at 2.30 p.m, he will try to arrange. Next day, he went to the Vigilance Police Station at Karungalpalayam. The policeman, he met on the previous day advised him to give a complaint. Since he did know how to write a complaint, the policeman himself wrote a complaint and got his signature. He was also asked to sign in the F.I.R copy. Thereafter, two Government staff came to the Station and they were introduced to him. He was asked to wait outside the room for 45 minutes. The two Government Staff, Inspector of Police and the Policeman had discussion inside the room and then, the policeman came out from the room and gave Rs.300/- to him.

7. He was told to keep the money in his pocket. Thereafter, they all went to the Revenue Inspector Office. He and one of the Government staff were instructed to met the Revenue Inspector and enquiry whether the migration certificates are made ready. If the certificate is ready, he was instructed to receive the certificate. When he went inside the room, it was crowded. When he enquired the Revenue Inspector whether the migration certificate made ready, he informed that the certificate are ready and he will send it. Being satisfied and happy that, the migration certificate is ready, he offered Rs.300/- given by the police to the Revenue Inspector. He refused to receive it and pushed away. So, he gave the money to thandalkaran (menial servant) who was present nearby saying he is very glad therefore, keep the money for Flag Day donation and thereafter, the trap team entered the office.

8. Since, the defacto complainant had come out with different version contrary to his complaint, he was treated as hostile witness and cross examined by the prosecution with the permission of the Court. It was suggested in the cross examination that, he had been won over by the accused and therefore, to support the accused he contradicts his previous statement and complaint to which P.W.10 had declined.

9. P.W.2 Thiru.Mohamed Hanifa, the shadow witness had deposed that, he was asked to be a witness in the trap proceedings by his Assistant Director. He witnessed the pre-trap proceedings demonstrating the significance of sodium carbonate phenolphthalein test. Smearing of three Rs.100/- currency given by the defacto complainant with phenolphthalein powder and entrustment of the said currency to the defacto complainant. He had deposed about the fact that, he went along with the defacto complainant Thiru.Mahalingam to the Office of Revenue Inspector. His office was over crowded and therefore, they waited for the crowd to recede. Thereafter, he along with defacto complainant met the Revenue Inspector, S.M.Anbumani. Two other staff were present in the table next to the Revenue Inspector. The appellant, on seeing the defacto complainant came out to the veranda from his room. Asked the defacto complainant whether he has brought the money demanded. Soon after, the defacto complainant took out the marked currency from his shirt pocket and handed over three Rs.100/- notes to Revenue Inspector, S.M.Anbumanai. He received it, counted the money and kept it in his right side pocket and assured the defacto complainant that, he will send the certificate. Thereafter, the trap team entered the office on receiving the signal given by the defacto complainant and recovered the tainted money from the appellant, this witness without any ambiguity had clearly deposed about the fact that the complaint was given by P.W.10. He confirmed with the defacto complainant about the content of his complaint and being satisfied, he agreed to be a witness for the trap proceedings. The trap money was brought by the defacto complainant and entrusted to him after smearing it with phenolphthalein under the entrustment mahazar marked as Ex.P.2, in which, he and other official witnesses signed along with the defacto complainant. He had further stated that, the Revenue Inspector on seeing the defacto complainant came out from his room to veranda and asked for the money and received the tainted money entrusted with the defacto complainant then kept it in his right side pant pocket. Two staff who were present in the Revenue Inspector room were identified as Sellamuthu, Office Assistant and another Alterin Prasath, Surveyor. P.W.2, the shadow witness was examined in chief on 17.06.2016. He was cross examined by the accused on 13.04.2018, his evidence not been impeached. The fact that, there was a trap proceedings on 06.01.2008 and the accused was present in the Revenue Inspector Office is proved by the prosecution by examining P.W.3 Alterin Prasath and P.W.4 Sellamuthu.

10. The contention of the accused that, he did not demand any bribe and the defacto complainant entrusted Rs.300/- to his menial servant on the day of trap for Flay Day collection been disproved by the prosecution by marking Ex.P.8 the miscellaneous petitions register for the period 29.11.2007 to 22.08.2008, wherein, it is stated that, the Armed Force Flay Day fund counterfoils for Rs.100/- bearing Serial No.075990 to 0760000 and for Rs.50/- serial No.087280 to 0872900 were returned to the Tashildar Office as early as on 22.08.2008.

11. Therefore, P.W.10 the defacto complainant, who had set the law into motion by lodging the complaint for reason best known has turned hostile and had come out with his own story that he voluntarily out of excitement gave Rs.300/- as Flay Day donation to the menial and that Rs.300/- is not his money but the money given by a policeman in the Vigilance office. It is unfortunate that, an educated person served in Hindustan Photo Films Industry for decades succumbing to the pressure of an accused person to retract his own case.

12. The trial Court, based on the direct evidence of P.W.2 and the Official witness who has no axe to grid against the accused and the presence of phenolphthalein in the hands and pant pocket had rightly held the accused guilty of offence under Section 7 and 13(2) r/w 13(1)(d) of P.C Act

13. The Learned Counsel for the appellant though strenuously argued since P.W.10 the defacto complainant has turned hostile, the case of the prosecution to be disbelieved *in toto* would also submitted that, M.O.1 the bribe money of Rs.300/- was not obtained by the accused and no evidence to corroborate the evidence of P.W.2. While P.W.10 the defacto complainant has turned hostile and P.W.3 Alterin Prasath and P.W.4 Sellamuthu, who are staff present in the office had not seen the demand or obtainment, the conviction is solely based on the evidence of P.W.2, witness interested in prosecution. Therefore, when P.W.10 has contradicted the evidence of P.W.2, the conviction of the accused is bad in law.

14. The Learned Senior Counsel for the appellant specifically submitted that there is no evidence for the alleged demand prior to the trap and on the day of trap. It is only P.W.2 who claims that, he saw the accused demanding money and receiving it from P.W.10. But P.W.10 had not supported P.W.2. According to P.W.2, the money was given to the menial servant on his own volition. P.W.2 had deposed being satisfied that, the accused has prepared the migration certificate for his children and assured to forward it immediately, he gave the money which was entrusted to him by the policeman.

15. Citing judgments of Hon'ble Supreme Court and High Court the Learned Senior Counsel for the appellant submitted that, demand of bribe money is a *sine qua non* to constitute the offence under Section 7 of Prevention of Corruption Act. Mere recovery of currency notes unless it is proved beyond all reasonable doubt, the accused voluntarily accepted the money knowing it to be a bribe, cannot constitute the offence under Section 7 of Prevention of Corruption Act.

16. In support of his submissions, the Learned Counsel for the appellant has relied upon the following judgments:-

(i). ***B.Jayaraj -vs- State of Andhra Pradesh*** reported in ***2014 (13) SCC 55***.

(ii). ***A.Subair -vs- State of Kerala*** reported in ***2009 (6) SCC 587.***

17. The Learned Counsel for appellant referring the judgment of the Hon'ble Supreme Court in ***Soundarajan -vs- State Rep. by the Inspector of Police, Vigilance and Anti Corruption, Dindigul*** reported in ***2023 ALL SCR (Crl) 901*** submitted that this is a case similar to the case in hand were the defacto complainant turned hostile and did not say anything about the demand of bribe by the appellant. Whereas, the shadow witness deposed that, the appellant asked the complainant whether he has brought the money but he had not said the appellant made a specific demand for gratification in his presence, the Hon'ble Supreme Court has clarified the term "gratification" that there has to be a specific demand for gratification. It is not a simple demand for money, but it has to be a demand of money as gratification. If the factum of demand of gratification and acceptance thereof is proved only then the presumption under Section 20 of Prevention of Corruption Act can be invoked and the Court can presume that the demand must be as a motive or reward for doing any official act.

18. Referring back to the testimony of P.W.2, in the light of the above submission made by the Learned Senior Counsel for the appellant, Court note that his testimony indicates that the accused on seeing the defacto complainant came out from his seat and asked the defacto complainant whether he has brought the money he demanded. Immediately the defacto complainant took out three Rs.100/- currency smeared with phenolphthalein kept in his pocket and gave it to the accused. The accused, after counting the money kept it in his right side pant pocket. Since, in this case, P.W.2 had heard the accused enquiring the complainant about the money he has demanded earlier and the complaint Ex.P.21 refers about the demand of bribe of Rs.300/- for processing the migration certificate, just because P.W.10 has turned hostile, any other meaning for the said demand except demand of gratification will be ridiculous.

19. The Learned Senior Counsel for the appellant also rely upon the judgment of the Hon'ble Supreme Court in ***Krishan Chander -vs- State of Delhi*** reported in ***2016 3 SCC 108,*** wherein the prosecution witness has turned hostile and the factum of demand not proved by other circumstantial evidence. The Court has rightly held the conviction for offence under Section 7 and 13(2) r/w 13(1)(d) of P.C Act are not sustainable.

20. This Court is conscious of the dictum laid by the Hon'ble Supreme

Court in the above said cases and also the latest Constitution Bench judgment rendered in ***Neeraj Dutta -vs- State (Govt of N.C.T of Delhi)*** reported in ***2023 AIR (SC) 330***. The Constitution Bench of the Hon'ble Supreme Court, taking note of the fact that, in trap cases, influential accused are able to gain over the complainant, had laid down the following principle for appreciation of evidence in case the key witnesses turn hostile.

> *(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*
>
> *(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the

Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20

of the Act is distinct from presumption of fact referred to above in point.

(e) as the former is a mandatory presumption while the latter is discretionary in nature."

21. Reading of the testimony of the defacto complainant, who has turned hostile contradicted his own complaint, previous statement and his signature found in the entrustment mahazar marked as Ex.P.2. In effect, had not supported the case of the prosecution but the evidence of other witnesses like P.W.2 the shadow witness, P.W.11 the Trap Laying Officer, P.W.3 and P.W.4 the colleagues of the accused, who are present at the trap, the recovery of tainted money from the accused marked as M.O.1 and the Scientific Experts report marked as Ex.P.14 are sufficient to hold the accused had obtained illegal gratification of Rs.300/- from P.W.10 Mahalingam. The tainted money which has been entrusted by P.W.10 at the Vigilance Office been recovered from the possession of the accused at the Office of Revenue Inspector Arachalur, Erode. Though P.W10 had deposed that, he gave the money to the menial servant, who was present near the accused, he is only an imaginary person invented by P.W.10 to save the accused and the attempt of the accused to influence P.W.10 to depose contrary to his earlier statement and the records prepared contemporaneously only indicates that, the accused guilty of receiving illegal gratification had also attempt sabotage the trial by influencing P.W.10 and introduce a story of Flay Day donation which has been found to be false from the entry found in Ex.P.8. The entire challen for the Flay Day receipt Books been returned to Tahsildar Office as early as 22.08.2008 and there was no need to collect any Flay Day Donation on 06.11.2008 that too voluntarily even without any request to donate. The accused has attempted to prove his innocence through Ex.D.1 which is the daily dairy of the accused for the period commencing from 16.10.2008 to 31.10.2008. Referring the entries for 31.10.2008, the Learned Counsel for the appellant would submitted that, on the said day, he was not in the Office and he was elsewhere and therefore, the case of the prosecution that, on 31.10.2008 at about 11.00 a.m when the defacto complainant met him regarding the migration certificate, he asked the defacto complainant to come in the evening and demanded Rs.500/- on that day gets falsified.

22. The plea of alibi considered in the light of the entries found in

Ex.D.1. The perusal of Ex.D.1 indicates that the accused on 31.10.2008, went to Velliangiri Pudur village to enquire the application made by Tmt.Yesohoda for death certificate of her husband and then went to Kollankoil Village to enquire about the application for death certificate given by one Mathammal and thereafter in the afternoon, he went to Erode and made courtesy call of RDO, who took charge recently and got instruction from him. These entries does not mention any specific time of all these visits and this cannot be an evidence for his absence at Office on 31.10.2008 at 16.00 hours. This document has lost its relevance in view of the hostility of defacto complainant and the case of the prosecution stand on the subsequent demand made by the accused on 06.11.2008 and the obtainment of the money which was later recovered from his possession.

23. In view of the above circumstances, even though the defacto complainant has turned hostile, the charge against the accused been satisfactorily proved through direct and circumstantial evidence. Therefore, the trial Court has rightly held the accused guilty and convicted him for the offence under Section 7 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

24. This Court for the reason stated, confirms the judgment of the trial

Court and dismiss the appeal. 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.

15.06.2023

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

To,

1. The Chief Judicial Magistrate/Special Judge, Erode
2. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Erode.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.
bsm

Pre-delivery judgment made in
Crl.A.No.168 of 2020

15.06.2023