IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.06.2023

Pronounced on :28.06.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.700 of 2016

A.Mohammed Husman .. Appellant/Accused

/versus/

State rep.by
Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Krishnagiri. .. Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., against the judgment dated 09.09.2016 passed in Spl.C.C.No.23 of 2010 on the file of the Chief Judicial Magistrate, Krishnangiri.

For Appellant :Mr.R.Ezhilarasan

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

JUDGMENT

The appellant/accused Mr.Mohammed Husman while working as Firka Surveyor at Hosur, was approached by one Sudhakar for survey and transfer of patta of the land, which stood in the name of his grand mother Patammal. For the purpose of survey and transfer of Patta, said Sudhakar paid fees of Rs.40/- at the Sub-Treasury, Hosur on 16/07/2008. Enclosing the challan, the application was submitted to the accused. The accused along with his Assistant visited the land and measured it on 16/08/2008. On that day, it is alleged that the accused demanded Rs.5000/- to prepare his report for sub-division and to forward the same to the Tahsildar office. Though Sudhakar declined to pay the money, the accused compelled him to bring atleast Rs.4000/- on 19/08/2008 and said, only then he will prepare the sub-division report and forward same to the Tahsildar Office.

2. Sudhakar not willing to pay bribe, preferred a written complaint to the Deputy Superintendent of Police, Vigilance and Anti-corruption, Krishnagiri on 19/08/2008 at about 10.00 AM. The complaint was taken up for investigation by Ramachandran, Deputy Superintendent of Police.

3. Two official witnesses by name Vellappan from District Education Office and Mr.Saravanan from the office of Deputy Director of Health Services, Krishnagiri, were asked to oversee the trap proceedings. In their presence, the trap money of Rs.4000/- (Rs.500 x 8) was smeared with phenolphthalein powder and entrusted to Sudhakar with instruction to meet the accused at his office and if he demand bribe, then give the tainted money to him and come out from the office and give signal to the trap team waiting. One of the official witnesses, Mr.Velappan was asked to accompany Sudhakar and witness the transaction and the conversation. The witnesses were explained about sodium carbonate-phenolphthalein test and demonstrated its significance. An entrustment mahazar was prepared narrating the pre-trap proceedings, which commenced at 12.30 hours and completed at 14.30 hours.

4. Thereafter, the trap team led by Ramachandran, Deputy Superintendent of Police along with Sudhakar went to the office of the accused at about 17.00 hours. The trap laying officer directed Sudhakar and Velappan to meet the accused. On seeing Sudhakar, the accused enquired him, whether he has brought the money demanded. Sudhakar answered in affirmative. The accused

instructed Sudhakar to keep the money in the left side outer upper pocket of the shirt. Accordingly, the tainted money was kept in the pocket of the accused. Then, the accused told Sudhakar that he will forward the report to the castle the suit as soon as possible.

5. The trap team waiting outside on receiving the signal from Sudhakar, entered the office of the accused. Sudhakar identified the accused to the Deputy Superintendent of Police, Ramachandran. Then, Ramachandran in the presence of witnesses, conducted phenolphthalein test on the fingers of both hands of the accused. The sodium carbonate solution remained colourless. The accused was asked to remove his shirt and place it on the table. The materials kept in his shirt pocket were taken out. The pocket portion of the shirt was subjected to phenolphthalein test. The colourless sodium carbonate solution turned pale pink. The accused on questioning, whether he received money from Sudhakar and if so, where is the money, the accused responded by showing the money kept on the table along with pen, pencil and calculator. One of the trap team member was asked to compare the number found in the currency with the number found in the entrustment mahazar. Being satisfied that the numbers tally, Ramachandran the

DSP prepared seizure mahazar. He recovered the file relating to the application of Puttammal for measuring and patta transfer.

6. The hand wash and shirt solution collected during the trap proceedings were sent to chemical analysis through the Court. On receipt of the chemical analyst report and after obtaining sanction from the Deputy Director land survey Department, who is the competent authority to remove the accused, the Final Report was filed against the accused.

7. The Trial Court framed charges under Section 7 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and tried the accused. To prove the charges, the prosecution examined 16 witnesses and marked 34 exhibits and 7 Material Objects. One document namely the communication of the Inspector of Police, Vigilance and Anti-Corruption to the District Education Officer, Krishnagiri, dated 19.08.2008 was marked as Ex.P-1 through PW-3 [Tr.Velappan], the shadow witness, who accompanied PW-2, the defacto complainant, Sudhakar to the office of the accused and witnessed the transaction.

8. Accepting the evidence let in by the prosecution, the trial Court held the accused guilty of charges framed against him and sentenced him to undergo punishment as below:-

Section 7of PC Act:	To undergo 6 months RI with fine of Rs.1000/- in default to undergo one month SI.
Section 13(2) r/w 13(1)(d) of PC Act:	To undergo 1 year RI with fine of Rs.1000/- in default to undergo one month SI.

9. Challenging the trial Court judgement of conviction and sentence, the aggrieved accused had preferred the above Criminal Appeal before this Court.

10. The learned counsel appearing for the appellant beside reiterating the grounds of appeal, submitted that the tainted currency was forcibly inserted in the shirt pocket of the accused. That is the reason why the sodium carbonate solution did not change its colour, when the accused dipped his right hand and left hand fingers. The recovery mahazar Ex.P-7 as well as witnesses PW-2 (defacto complainant), PW-3 (shadow witness) and PW-15(trap laying officer) admit that the hands wash of the accused remained colourless. However, the report of the

chemical analyst marked as Ex.P28 indicates that, the solution sent for analysis where turbid liquid with pink tint. The analysis report also detected both phenolphthalein and sodium carbonate. Therefore, it is clear that the trap proceeding alleged to have been conducted on the said date and time is fake and false. The solution bottles sent for analysis were not the bottles alleged to have been sealed and labelled as said in the recovery mahazar[Ex.P7].

11. Further the learned counsel appearing for the appellant also submitted that the accused was not in his office till 6 o'clock on 19th, the day of trap. He came to the office only after 6.00 p.m, but the prosecution case is that the trap completed by 5:10 p.m. The contradiction in the testimony of PW3 the shadow witness not been properly appreciated by the trial Court. The defence Exhibit D-1 goes to show that the Inspector of Police at Vigilance and Anti Corruption office at Krishnagiri has sought the assistance of group 'C' officer from the District Education Office, Krishnagiri and requested that the officer to be present in the Directorate of Vigilance and Anti-Corruption Office on 19/08/2008 at 10.00 am. Pursuant to this letter, Velappan (PW-3) was instructed to report at the Deputy Superintendent Office of Vigilance and Anti-Corruption, Krishnagiri. Whereas the

printed FIR Ex.P-30 indicates that the complaint was received only at 10.00 am registered at 10.00 a.m by Ramachandran, Deputy Superintendent of Polic. Then how come in anticipation of the complaint the Inspector of Police was able to write to the DEO to spare an officer rank of 'C' to be present at Vigilance office at 10.00 am.

12. The oral evidence of the shadow witness PW-3 had deposed that he was informed by the DEO to appear before the Superintendent of Vigilance and Anti-Corruption at 12.30 hours on 19.08.2008. Accordingly, he went to the Vigilance Office at 12:30 hours. The entrustment which was marked as Ex.P5 indicate that the pre-trial proceedings commenced at 12.30 hours and completed at 14:30 hours. Thus, going by the records relied by the prosecution, it is clear that the trap laying officer has grossly violated the Vigilance Manual. Before proceeding with the registration of the complaint and trap, he had not made any preliminary enquiry about the veracity of the complaint. He had created documents subsequently after planting the tainted money in the shirt pocket of the accused forcibly.

13. Per contra, the learned Government Advocate (Crl.Side) submitted that guilt of the accused proved through the evidence of the defecto complainant and the evidence of shadow witness namely, Sudhakar and Velappan examined as PW-2 and PW-3. The first demand of illegal gratification by the accused was on 16/08/2008. That was when he and his assistant went to the land of Puttammal and measured it along with his assistant. The accused after surveying the land, the accused demanded Rs.5000/- to prepare the report. Then, he reduced it to Rs.4000/- insisted the defecto complainant to come with money on 19/08/2008. Not interested in giving the money, the complaint (Ex.P4) was given to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Hosur. On registration of FIR Ex.P30, trap proceedings commenced. The registration of the complaint by the DSP and the request by the Inspector of Police to spare a group 'C' officer were done simultaneously. Therefore, there is no reason to doubt the case of the prosecution on this ground.

14. Further, the learned Government Advocate appearing for the State also submitted that there is a presumption under Section 20 of the Prevention of Corruption Act, 1988 that the money recovered from the accused presumed to

have obtained by him as illegal gratification. The accused has failed to rebut this statutory presumption. The burden to report the presumption is on the accused. The accused has not come out with any plausible reason for having the tainted money marked currency of Rs.4000/- in his possession.

15. Heard the Learned Counsel appearing for the appellant and the Learned Government Advocate (Crl.Side) for the State. Records produced

16. The case of the prosecution is that the tainted currency of Rs.4,000/- was recovered from the accused and the said money was found in his left side outer upper shirt pocket. It is the admitted case of the prosecution that the money was kept in the pocket of the accused by the defacto complainant as instructed by the accused. PW-2 and PW-3 had consistently deposed that the accused did not touch the money. If that be the case, the presence of phenolphthalein in the hands wash solution sent to the Laboratory has to be explained by the prosecution. Unfortunately prosecution witnesses are silent about this fact.

17. Further, mere presence of tainted money in the possession of the public servant will not attract the presumption under the Prevention of Corruption Act, 1988. The foundation fact of demand of illegal gratification is to be proved by the prosecution positively.

18. In this case, the prosecution case is that the accused demanded illegal gratification on 16.08.2008 during his visit to the field of Puttammal. PW-10 who went along with the accused, had deposed he saw the accused and the defacto complainant talking but he did not hear their conversation. On 19.08.2008 before the trap, the accused asked the defacto complainant, whether he brought the money and then told the defacto complainant to keep the money in his pocket. The evidence of the shadow witness corroborates the evidence of PW-2 but the reliability of PW-3 evidence is highly doubtful since his inconsistency.

19. The application of Sudhakar to measure the land, sub-divide and issue patta been under process and the file recovered from the accused on the day of trap indicates that two days prior to the trap, the accused had inspected the field. Nagaraj the brother of PW-2 had objected measuring the land. The draft report

was under preparation. The unsigned incomplete documents in the file prove the fact that the accused has not delayed preparing his report expecting bribe as alleged by PW-2.

20. PW-5 [Mr.Puttaraj], the Taluk Surveyor of Hosur had in the cross examination said that the accused received the file relating to the application of Puttammal on 07/08/2008. He had surveyed and measured the land on 16/08/2008. The next day happened to be Sunday. He know, Nagaraj the brother of Sudhakar had objected measuring the land and given a complaint to the Sub-Collector. The said objection is still pending. Only on 18/08/2008, the accused received copy of the chitta of the land. On 19/08/2008 morning at 7.00 am he had gone to field visit along with Sub-Collector to Onnalvadi village.

21. Thus, through the above answer elucidated from PW-5, in the cross examination, the accused had satisfactorily explained that, the objection of Nagarajan was the reason why he could not complete his report immediately.

22. Further, in the recovery mahazar Ex.P-7, the explanation given by the accused about the tainted money in his possession find place. The theory of PW-2 inserted the money in his pocket without any demand is a plausible explanation and sufficient to rebut the presumption that the money was not received by him as a reward or motive to do any act, whether legal or illegal.

23. The trial Court failed to consider that the chemical analysis report is contrary to the case of the prosecution. The doubt about the request letter to the DEO to depute a class ‘C’ officer even before the receipt of the complaint and registration of the complaint makes PW-3 presence during the trap doubtful. The insertion of the accused name in the written complaint [Ex.P4] could be seen obviously in the naked eye.

24. For the said reasons, the benefit of doubt is extended to the accused, considering the plausible explanation of the accused that the money was inserted in his pocket, while he was engrossed in his work.

25. In the result, **this Criminal Appeal No.700/2016 is allowed.** The judgment of conviction passed by the Chief Judicial Magistrate, Krishnagiri made in Crl.A.No.23 of 2010, dated 09.09.2016 is hereby set aside. Bail bond if any executed by the accused stands discharged. Fine amount paid if any, shall be refunded to the accused.

28.06.2023

Index:yes/no
speaking order/non speaking order
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To:

1.The Chief Judicial Magistrate, Krishnagiri.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption, Krishnagiri.

3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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delivery judgment made in
Crl.A.No.700 of 2016

28.06.2023