



Crl.A.No.702 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2023

Pronounced on : 18.05.2023

CORAM

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

Criminal Appeal No.702 of 2016

State Represented by
The Public Prosecutor,
High Court, Madras-104.
(Crime No.15/2004
of Cuddalore V & AC)

... Appellant

/versus/

M.Elangovan

... Respondent

Prayer:- Criminal Appeal is filed under Section 378 of Cr.P.C., praying to allow the appeal and set aside the acquittal judgment dated 29.01.2016 in Special Case No.23 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Villupuram and convict the respondent/accused as charged.

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

For Respondent : Mr.R.Karthikeyan



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JUDGMENT

Challenging the Trial Court judgment of acquittal dated 29.01.2016 in Spl.C.C No:23 of 2014 on the file of Special Court for Trial of cases under Prevention of Corruption Act, Villupuram District, this Appeal against acquittal is preferred by the State.

2. The Inspector of Police, Vigilance and Anti Corruption, Cuddalore registered FIR in Crime No.15 of 2004 under section 7 of Prevention of Corruption Act and laid trap on 06.10.2004 based on the complaint dated 05.10.2004 given by one Tamilbalan S/o Sanyasi Chettiar alleging that the Firka Surveyor Mr.Elangovan demanding bribe of Rs.1000/- to give patta after measuring his 4 cents land and sub divide. The accused was caught after the receipt of the phenolphthalein smeared 2 x 500 rupees notes, which was earlier entrusted to the *de facto* complainant, Tamilbalan during the pre trap proceedings.

3. After investigation final report was filed against the accused, the Trial Court framed charges under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act. To prove the charges, the prosecution examined 21 witnesses, marked 39



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documents and 3 material objects. In defence 2 Exhibits were marked in the course of cross examination of prosecution witnesses. The Trial Court, on considering the evidence, held that the prosecution failed to prove the charges. Hence, the present Appeal by the State, questioning the legality and propriety of the Trial Court judgment of acquittal.

4. The Learned Government Advocate (Criminal side) submitted that the *de facto* complainant purchased 4 cents of land at Vengaivadi Village, Kallakuruchi District on 26.09.2003 from one Kaliyathan Udaiyar. He applied for sub division and separate patta on 14.06.2004 along with the Treasury challan dated 27.05.2004 for remittance of Rs.80/-. The accused, who was the then Firka surveyor, received the application for sub division and separate patta, but did not process the application in spite of repeated visit to the office of the accused. On 05.10.2004, when the *de facto* complainant met the accused at about 9.30 am, the accused demanded Rs.1,000/- as bribe to act on the application.

5. The *de facto* complainant, who was not interested in giving bribe, on the same day by 3.00 p.m., went to DV & AC office at Cuddlaore and reported



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the matter in writing (Ex P-2) to Ambikapathi (PW-20) the Inspector of Police.

He after registering the FIR in Crime No.15 of 2004 under section 7 of P.C.Act, arranged for trap on the next day. On 06.10.2004 between 6.00 a.m., to 7.00 a.m., in the presence of two official witnesses, the pre trap proceedings such has entrustment of the phenolphthalein smeared currency to the *de facto* complainant, demonstration of phenolphthalein – sodium carbonate test was done and reduced into a mahazar (Ex P-6).

6. The Trap team proceed to the Thyagaduruvam Firka surveyor office and reached at about 9.30 am. PW-2 - the *de facto* complainant accompanied by PW-3 Basha - the shadow witness went to the office of the accused and found it is locked. On enquiry they learnt that the accused had gone to the Kallakuruchi Taluk office and will be returning soon. So, PW-2 and PW-3 waited for the arrival of the accused. At about 11.20 am, the accused came and opened the office. PW-2 and PW-3 followed the accused. PW-2 gave the tainted currencies (2x Rs.500) to accused on his query whether he has brought the money demanded. After getting the pre arranged signal from PW-2, the trap team entered the accused office and was identified by PW-2 as Elangovan, Firka Surveyor, who received the bribe. Thereafter, the accused was asked to



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dip his right hand in the colourless sodium carbonate solution. The colourless solution turned into light red. Confirming that the accused has handled the phenolphthalein smeared currency, the trap laying officer, PW-20 enquired the accused whether he had received any money from PW-2. The accused admitted his guilt and took out the currencies kept in his right side shirt pocket. The number found in the currency were checked with the numbers noted in the entrustment mahazar Ex.P-6 and found tallied. After giving an alternate shirt, the accused was asked to remove his shirt and the pocket portion of the shirt was dipped in the sodium carbonate solution. The colourless solution turned into light red. The solutions were collected in two separate bottles and labelled. From the accused the file relating to the application of PW-2 was recovered. The entire trap proceedings were reduced into writing and marked as Ex P-7.

7. Further investigation was taken up by the PW-21 Inspector of police Mr.Panneerselvam, who collected the chemical analyst report, sanction to prosecute the accused being a public servant and completed the investigation. PW-1, the Assistant Director of Land Survey and Registration, who accorded sanction to prosecute the accused had deposed about the sanction order and



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his subjective satisfaction to prosecute the accused under P.C.Act. PW-2, the *de facto* complainant had deposed about the application he made for sub division and issuance of Patta, the inordinate delay by the accused in processing the application expecting reward or motive to discharge his official duty, the demand of illegal gratification on 05.10.2004 and 06.10.2014, the acceptance of the bribe money on 06.10.2004. PW-3, the shadow witness had corroborated the evidence of PW-2 regarding the demand and obtainment of the bribe money by the accused. PW-5, the Zonal Deputy Thasildar Grade II, who was in-charge of Zonal Deputy Thasildar Grade I at that time, received the application of the defacto complainant for issuance of separate patta had identified his note on Ex.P-2. In his register he has recorded about the endorsement.

8. The Learned Government Advocate (Crl.Side) representing the State, submitted that while the eyewitnesses PW-2 and PW-3 had deposed about the demand and acceptance of bribe by the accused, the documents relied by the prosecution proved that the application for sub division without proper inspection was kept pending by the accused. The chemical analyst report Ex.P-37 proved the presence of phenolphthalein and sodium carbonate in the hand



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and shirt pocket of the accused, the Trial Court had without basis has observed that there is contradiction in the testimony between PW-2 and PW-3. Also given undue weightage to the entry found in Ex.P-31-the day book maintained by the accused.

9. According to the Government Advocate, the testimony of PW-6 that the application of PW-2 was closed since there was dispute over possession and title. The evidence of PW-6, PW-8 and PW-11, who all have deposed that the accused made entry in his day book that he visited the property and there was dispute regarding the title and enjoyment. PW-2's letter Ex.D-1, to withdraw his application for patta and sub division with liberty to apply later after settling the dispute with the rival claimants are not a probable defence for the accused to rebut the presumption under Section 20 of the P.C.Act. However, erroneously, the Trial Court has concluded that on the date of alleged demand i.e., 05.10.2004 and the alleged obtainment of illegal gratification on 06.10.2004, there was no application pending with the accused. The testimony of PW-7, PW-9 and PW-10, who had deposed about the inspection of the PW-2's land subsequent to the trap and issuance of patta to his land was ignored by the Trial Court, their evidence proved that the



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application of PW-2 with fee of Rs.80/- was pending till the trap and was considered by these witnesses after the trap and separate patta issued to PW-2.

10. Per contra, the learned counsel appearing for the accused/respondent submitted that the PW-2 in the cross examination admits that he had met the accused three or four times prior to 05.10.2004, but he never demanded any bribe on those occasions. For the first time, he demanded bribe on 05.10.2004, immediately he gave the complaint to the Vigilance. Ex D-1 is the part of the file recovered during the trap and the entry in Ex P-31 are records kept in the course of business. The trial court has rightly appreciated its evidenciary value and disbelieved the prosecution case. PW-8 a public in the village had deposed that the accused visited the land of PW-2 but did not measure it due to the rival dispute and subsequently, another officer came and measured it and gave patta to PW-2. To get separate patta for the land in dispute, PW-2 had designed the complaint. PW-20 and PW-21 without proper investigation and suppressing the vital document had prosecuted the accused. However, the Trial Court has rightly dismissed the case and acquitted the accused.

11. On perusal of the evidence and considering the submissions of the



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respective counsels, this Court find following contradictions between the testimony of PW-2 and PW-3.

a) PW-2 had deposed that after completion of the pre trap proceeding at Vigilance office, at about 7.00 am they left to Thyagathurvam Panchayat Union office. PW-3 had deposed that he and PW-2 along with the trap team went to Thyagathuruvam in two Government vehicle. He and PW-2 got down half away from the Firka Surveyor Office and went by walk to the Firka surveyor office and reached at about 9.30 am.

b) Regarding, the demand and acceptance of the bribe money, it is not clear whether the tainted money was offered voluntarily to the accused by PW-2 as he had deposed before the court or whether the accused demanded it and received from PW-2, as deposed by PW-3.

c) PW-2 admits that apart from the bribe money smeared with phenolphthalein, he had his personal money also when he was entrusted with the tainted money. PW-3 says, the accused had about 50 to 60 rupees in his pant pocket, PW-20 allowed the accused to



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keep it with him. These two facts are newly introduced by PW-2 and PW-3, which does not find place in the entrustment mahazar Ex P-6 or in the recovery mahazar Ex P-7.

12. The accused through Ex.D-1 and Ex.D-2, had probablised his defence that the patta application of PW-2 was rejected on 20.09.2004. Knowing the rejection, to get patta pressurising the officials, the false complaint given as if on 05.10.2004, the accused demanded bribe to recommend the application. Infact at that time the application has already been considered and closed on the request of PW-2. Conveniently, when confronted with Ex.D-1 letter, PW-2 had disowned the document. However, through the records it is clearly established by the accused, that the patta transfer application Ex.P-2 was withdrawn by PW-2 vide his letter marked as Ex.D-1 and based on his letter the proceedings Ex.D-2 dated 20.09.2004 issued. All these documents were recovered from the office of Firka Surveyor during the trap. Therefore, there is no scope to suspect that Ex.D-1 created in anticipation of trap.

13. Thus, reasoning given by the trial Court to acquit the accused is a



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possible view and this Court does not find any perversity or non application of mind to interfere. Hence, the Appeal is dismissed. The trial Court judgment is confirmed.

18.05.2023

Index : Yes/No

*Speaking order/Non-speaking Order
rpl*

To,

1.The Special Court for Trial of Cases under the Prevention of Corruption Act,
Villupuram

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



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Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
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18.05.2023