IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2023

CORAM :

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

Crl.A.No.75 of 2016

K.Sivashanmugam .... Appellant/Accused

Vs

State Rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore, Cuddalore District.
Crime No.7/AC/2000/CL .... Respondent/Complainant

PRAYER : Criminal Appeal has been filed under section 378 (1) (b) of Criminal Procedure Code to call for the records in Spl.Case No.2 of 2003 on the file of the learned Special Judge/Chief Judicial Magistrate, Cuddalore District, Cuddalore and set aside the conviction and judgment dated 11.01.2016.

For Appellant : Mr.S.Saravana Kumar

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

JUDGMENT

The Appeal filed by the first accused who was found guilty for the offence under Section 13(2) r/w 13(1)(d) of Prevention of

Corruption Act, 1988 by the Trial Court and convicted to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment.

2. The brief facts of the prosecution case is that the appellant herein is the Divisional Fire Officer, Cuddalore Division at Cuddalore. There was a selection for fire man in the division and out of 16000 applicants, 220 candidates were scrutinized and selected after written examination and physical test. The short listed 220 candidates were asked to join duty after getting medical fitness certificate.

3. The charge against the appellant along with another fire man A2/Harikrishnan @ Harikrishnamoorthy is that for arranging medical fitness certificate for those 220 candidates, Rs.2,000/- each was demanded. Vijayakumar, Ragothu and Parthasarathy were nominated by the accused to collect Rs.2,000/- from 32 persons. Dhandapani, Thangapandian, Balakrishnan, Sivakumar and Varadharajalu were nominated to collect Rs.2,000/- from 49 persons. When these candidates were before the Medical Board, the vigilance team enquired them, recorded the statements about the payment of Rs.2,000/- to the persons

nominated by A1. Pursuant to which, on 20.10.2020, search has been conducted at the residence of the appellant as well as the second accused K.Harikrishnan @ Harikrishnamoorthy. Incriminating materials were recovered from their residences and based on the confession statement, the relatives were called to bring the money, alleged to have been collected from the candidates. Accordingly, a sum of Rs.49,950/- was recovered based on the information given by the appellant and Rs.76,000/- was recovered based on the information given by Harikrishan the second accused. These amounts were alleged to be the bribe amount collected from the candidates under the guise of arranging medical fitness certificate.

4. To prove the charges, the prosecution has examined 145 witnesses and marked 38 exhibits. The money recovered based on the statement given by the second accused Rs.76,000/- marked as M.O.1 series and Rs.49,950/- recovered based on the statement given by the appellant/1st accused marked as M.O.2 series. In defence, 9 exhibits were marked.

5. The Trial Court, after appreciating the evidence, found that there is no material to presume that there was a demand of any illegal gratification. Whereas, the obtainment of illegal gratification by A1 proved through the evidence of P.W.26, who is one of the aspirants and other witnesses in addition to the confession statement of A1 leading to recovery of Rs.49,950/- through P.W.37. Therefore, the Trial Court found A1/the appellant herein guilty for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

6. The learned counsel appearing for the appellant would submit that the Courts have held time and again that demand is *sine qua non* for proof of obtainment. While the Trial Court has acquitted the appellant from the charge under Section 7 of Prevention of Corruption Act for which the presumption under Section 20 available, for proof of the charge under Section 13(1)(d) of Prevention of Corruption Act, there cannot be any presumption but to be proved beyond doubt. Whereas, in this case, the prosecution miserably failed to prove any obtainment of illegal gratification by the appellant herein. The Trial Court, based on the inadmissible evidence, had convicted the appellant.

7. The learned counsel would further submit that the alleged recovery of Rs.49,950/- based on the confession statement of the appellant is highly doubtful. The testimony of P.W.4 who is one of the witnesses for the recovery and the testimony of P.W.137 from whom the money is stated to have been recovered by the prosecution does not support the prosecution case.

8. The learned counsel appearing for the appellant specifically submitted that as per the prosecution, on 20.10.2000, the appellant was taken into custody in the morning at 8.30. a.m., when his house was searched and thereafter, he was under the custody of the respondent. Whereas, P.W.4 states that Rs.49,950/- was handed over by A1/appellant at about 7.45 p.m., this is contrary to the prosecution evidence as spoken by P.W.137, who had deposed that on 20.10.2000 at about 11.00 a.m., he got a phone call from A1 with instruction that she should meet the wife of A1 and collect Rs.50,000/-. Accordingly P.W.137 met the wife of the appellant at Katpadi and collected a bag and came back to Cuddalore. Since it was night time, he stayed in his sister Prema's house and next day he came with the bag and met the appellant at Cuddalore Co-operative Society Bank and handed over the money to

the appellant. If the above statement is to be true, the money bag should have been handed over to the appellant on 21.10.2020. Further, according to P.W.137, on the previous day night, he gave the money bag to the sister Prema for custody and collected the same from her and at the time of handing over it to A1 on the next day, the police team along with the accused recovered the money. Whereas, the said Prema who was examined as P.W.117 turned hostile, which has falsified the case of the prosecution in toto regarding recovery.

9. The learned counsel appearing for the appellant would submit that the Trial Court also miserably failed to appreciate the evidence that the money, which was recovered from the appellant was the provident fund money, which he has availed and kept it in his house. The said money was illegally taken away when the search was conducted in the house during the Forenoon of 20.10.2020. He also submitted that while the persons, who alleged to have been engaged to collect money from the appellants all turned hostile, based on the evidence of P.W.26, P.W.30 and P.W.56, who also do not speak about the obtainment of the bribe money by the appellant, the conviction is unsustainable.

10. The learned Government Advocate (Crl Side) appearing for the State would submit that it is a case of the massive bribe demand from around 81 persons for arranging medical fitness certificate. Though the persons engaged by A1 to collect money turned hostile because they are all the subordinates of the appellant, the fact stand proved through other witnesses. The demand and obtainment of Rs.2,000/- for getting medical fitness certificate is spoken by P.W.36 and also corroborated with the confession statement of the accused/appellant leading the recovery.

11. The learned Government Advocate (Crl.Side) took through the deposition of P.W.4, P.W.26, P.W.51 and P.W.137 and submitted that the evidence of these witnesses to be cumulatively only taken into account in the light of recovery of Rs.49,950/- based on the information disclosed by the appellant.

12. Heard, Mr.S.Saravana Kumar, learned counsel appearing for the appellant and Mr.S.Udaya Kumar, learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

13. Section 13(1)(d) of Prevention of Corruption Act, 1988

says "whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than (three years) but which may extend to (seven years) and shall also be liable to fine".

14. The case of the prosecution as projected in the final report is that on 17.10.2000 when the selected candidates about 32 in numbers reported before the appellant, he demanded Rs.2,000/- for arranging medical fitness certificate and informed them that he has nominated some of his subordinates to collect the money and told the selected candidates to pay the money to them so that the medical fitness certificate can be obtained. Similar demand was made on 18.10.2000, to the second batch of 50 persons who reported for duty. Both the groups were sent for medical examination on 18.10.2000 and 19.10.2000 and most of them paid Rs.2,000/- to the agents appointed by A1, which came to be recovered partially after registration of the case and arrest of A1 and A2. The primary fact regarding demand was not found proved and the Trial Court has acquitted both the accused from the charge under Section 7 of Prevention of Corruption Act. Regarding obtainment of illegal

gratification by A1, the Trial Court relying upon the recovery based on the confession given by the appellant/A1 and the other evidences, found him guilty and convicted. As pointed out by the learned counsel for the appellant neither the alleged confession of the accused nor the recovery based on the confession appears to be reliable and in accordance with law.

15. The very fact that a sum of Rs.49,950/- recovered in the manner spoken by the prosecution itself is highly doubtful because there is no corroboration between the testimony of P.W.4 a retired Tahsildar who was called to be the witnesses for the search and seizure of the accused house and the testimony of P.W.137 who brought the money and handed over to the police on the instruction given by the accused. More so, when there is a possible explanation given by the accused that this money was in his house and taken away by the police and the source of the money was the Provident Fund loan he availed. The Superintendent of Fire and Rescue, who was examined as P.W.5 had deposed that prior to the case, the appellant had availed GPF Loan and lend credence to the explanation of the accused.

16. For the said reason, this Court finds that there cannot be

a presumption under Section 13(1)(d) of Prevention of Corruption Act unlike Section 7 of Prevention of Corruption Act, were presumption can be drawn. The duty of the prosecution is to prove the charge under Section 13(1)(d) of the Prevention of Corruption Act beyond reasonable doubt, in this case the Trial Court itself has found that there is no proof for demand the obtainment of illegal gratification neither through direct evidence nor through circumstantial evidence stand proved.

17. In the result, the Criminal Appeal is allowed. Fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand discharged. The recovered money of Rs.49,950/- through M.O.1 shall be returned back to the appellant.

17.04.2023

Internet : Yes/No
Index: Yes/No
Neutral Citation : Yes/No
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To

1. The Special Judge/Chief Judicial Magistrate,
Cuddalore District, Cuddalore

2. The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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