IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2023

PRONOUNCED ON: 09.11.2023

Coram

The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

Crl.A.No.798 of 2016

S.Rajendran ... Appellant/Sole Accused

Vs.

State represented by,
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Special Investigation Cell, Chennai.
(Crime No.33/2009) ... Respondent/accused

Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction passed in C.C.No.146/2011(Old C.C.No.27/2010), dated 14.11.2016 by the learned Special Judge for the cases under Prevention of Corruption Act at Chennai.

For Appellant : Mr.V.Krishnamoorthy

For Respondent : Mr.C.E.Pratap,
Government Advocate (Criminal side)

JUDGMENT

The appellant, who is the sole accused, stood charged was found guilty and convicted for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- in default to undergo two months simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- in default to undergo two months simple imprisonment for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, in C.C.No.146/2011, dated 14.11.2016 by the learned Special Judge for the cases under Prevention of Corruption Act at Chennai, has filed this Criminal Appeal.

2.**Prosecution's version:**

2.1.The appellant/accused was working as a Commercial Inspector O/o Assistant Engineer, TNEB., MGR Nagar Division, K.K. Nagar, Chennai, from 31.12.2008 to 11.08.2009 and is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.

2.2. The defacto complainant, who was examined as P.W.2, was doing business of selling Newspapers and Magazines in the name and style of 'Yadhava News Mart' at Bharathi Nagar, Nesapakkam, Chennai and he had a single phase EB connection for his house at No.2, Kannadasan Street, 11th Cross Street, Khan Nagar, Nesapakkam, Chennai. He had applied for 3 phase EB connection on 07.07.2009 at the Office of Assistant Engineer, TNEB., MGR Nagar Division, K.K.Nagar, Chennai, and paid a sum of Rs.50/- towards registration fees on 21.07.2009. On 29.07.2009 at about 4.30 p.m., the accused met the defacto complainant at his house and demanded money for effecting 3 phase EB connection. Further, on 31.07.2009 at about 11.30 a.m., when the defacto complainant had remitted the requisite fees of Rs.12,075/- through the accused, the accused had demanded Rs.2000/- as illegal gratification from the defacto complainant. Again, when the defacto complainant met the accused on 11.08.2009 at about 10.30 a.m., and enquired about the EB connection, the accused reiterated his demand and asked the defacto complainant to arrange the money in the evening itself and informed him that he would receive the amount at the defacto complainant's shop. Pursuant to the same, on the same day at about 5.45 p.m., the accused had come to the Newspaper shop of the defacto complainant at Bharathi Nagar, Nesapakkam, Chennai and had received the bribe amount in the presence of official witness Tr.Govindarajan and thereby committed an offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The appellant/ accused was arrested and thereafter, the respondent, after completion of the investigation, filed the Final Report against the accused before the Principal Sessions Judge, Chennai and the same was taken on file on 07.09.2010 and made over to IV Additional Special Court, Chennai.

2.3. On issuance of summons, the accused appeared before the Court and the memo of appearance was filed through his counsel. In due compliance of Section 207 Cr.P.C., copies were furnished to the accused. When the appellant/accused was questioned on the incriminating materials under Section 313 Cr.P.C., the accused pleaded not guilty and sought to be tried. Based on the materials, charges were framed against him for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

2.4. On the side of the prosecution, P.Ws.1 to P.W.9 were examined and Exs.P1 to P19 and M.Os.1 to M.O.3 were marked.

2.5. Based on the incriminating materials when the accused was questioned, he denied the charges. However, he has not examined any defence witness and marked any documents.

2.6. The trial Court, after hearing the arguments on both sides, found the accused guilty and sentenced him to undergo imprisonment as stated above. The present appeal has been filed against the judgment of conviction and sentence imposed by the trial Court.

3. Mr.V.Krishnamoorthy, learned counsel appearing for the appellant, would submit that the prosecution has failed to prove its case beyond reasonable doubt and has also failed to prove the foundational facts which are required to prove that the appellant is guilty for the above mentioned offences. The trial Court had erred in convicting the appellant without there being any legal proof of demand. He would further submit that there had been huge delay in lodging a complaint and though the initial demand is

stated to be made by the appellant/accused on 31.07.2009, the complaint has been made to the respondent only on 11.08.2009, which makes the complaint doubtful. Further, as per the evidence of P.W.2, the defacto complainant had visited the office more than five times between 02.07.2009 and 30.07.2009, the conduct of the defacto complainant in not giving the complaint against the appellant before the superior officer creates grave suspicion in the prosecution case. He would also submit that even as per the evidence, the actual demand has been made only by P.W.4-Assistant Engineer and the appellant/accused, who is a differently abled person, has been made as a scapegoat. Admittedly, P.W.3 is a stock witness, who, by his own admission, had stated that he had been a witness in another case registered by the respondent and thereby, the evidence of P.W.3 is unreliable and doubtful. He would further submit that the conduct of P.W.8, the Trap Laying Officer, creates suspicion since, in his evidence, he had denied the presence of the petitioner's friend one Chellakannu whereas later, he had admitted that the arrest intimation was served on his friend and his signature was obtained. There are discrepancies with regard to receipt of bribe amount by the accused and the prosecution has not proved whether the bribe amount was received by the accused in his right hand or left hand from the defacto complainant. He would further submit that as per evidence of P.W.4, when the work of the appellant/accused was completed as early as on 25.07.2009, there is no need for the appellant to make any demand and thereby, sought to allow the appeal and set aside the judgment of the trial Court.

4.1 Per contra, Mr.C.E.Pratap, learned Government Advocate (Criminal side), appearing for the respondent would submit that it is the case where the petitioner, who was working as Commercial Inspector in Tamil Nadu Electricity Board and a public servant, has demanded and accepted Rs.2,000/- as illegal gratification from the defacto complainant in the presence of the witnesses for effecting 3 phase electricity connection to the house of the defacto complainant.

4.2. The prosecution by the cogent evidence of P.W.2-defacto complainant and P.W.3, the witness for the trap proceedings and P.W.8-Trap Laying Officer, has categorically proved the demand and acceptance made by the appellant/accused. Once the prosecution has proved the foundational facts of demand and receipt, the presumption is raised against the accused and the burden thereafter shifts on the accused whereby he has not let in any evidence of rebuttal to disprove the case of the prosecution. The trial Court, having rightly found that the appellant has not rebutted the presumption under Section 20 of the Prevention of Corruption Act, had arrived at a finding that the appellant is guilty. Further, though it is claimed that P.W.3 had assisted the respondent in other cases, he cannot be treated as a stock witness. He is a responsible officer working as Senior Inspector, O/o Registrar(Housing), Housing Co-operative Society, Chennai, and that he has been called to be a witness after obtaining appropriate orders from his superior authorities. He would submit that the evidence of P.W.3 is cogent and just because he has been a witness in an earlier case, he cannot be dubbed as a stock witness when his evidence is clear.

4.3. Though the appellant/accused claims to be a physically challenged person, no legal evidence has been let in by way of defence to prove that he is a physically challenged person and admittedly as per the evidence of P.W.2, the petitioner is stated to have received the tainted money in his right hand and counted and thereafter, kept it in his pocket in the presence of witnesses and the phenolphthalein test conducted on both hands have proved positive and the serial numbers of the currency notes recovered tallied with the notes in the Ex.P10-Entrustment Mahazar and thereby, he would seek for dismissal of the appeal.

5. Heard Mr.V.Krishnamoorthy, learned counsel appearing for the appellant/accused and Mr.C.E.Pratap, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

6. What has to be seen is (i) whether the prosecution has proved its case beyond reasonable doubt and (ii) whether the trial court is legally right in appreciating the evidence in correct perspective and convicting the accused.

7. The evidence of the prosecution as culled out from the records that P.W.1-Thiru G.Perumalswamy is the Superintending Engineer, South Circle, Chennai and he had deposed that on perusing the documents being satisfied that there is a criminal misconduct, had accorded sanction to prosecute the case by Ex.A1-sanction order dated 17.05.2010.

8. P.W.2-Subramani is the defacto complainant and was doing business of vending Newspapers and Magazines in the name and style of 'Yadhava News Mart' at Bharathi Nagar, Nesapakkam, Chennai and that he had single phase EB connection for his house at No.2, Kannadasan Street, 11th Cross Street, Khan Nagar, Nesapakkam, Chennai. He had applied for 3 phase EB connection on 07.07.2009 at the Office of Assistant Engineer, TNEB., MGR Nagar Division, K.K.Nagar, Chennai, the application form is marked as Ex.P2. The Assistant Engineer had directed him to obtain an endorsement from the Notary Public and Ex.P3 is the xerox copy of the property tax collection receipt with an endorsement of the Notary. When he had come out of the E.B., office, the accused had enquired him and informed that his name is Rajendran and that he was working as Commercial Inspector in the said office and if he pays money, the work can be completed soon. P.W.2 had not stated anything on that day and on 21.07.2009, he had gone to the EB Office and the Assistant Engineer had directed him to pay Rs.50/- and obtain a receipt and when he went again on 29.07.2009, the Assistant Engineer was not available in the office and at the same time, the accused had come to his residence in the evening around

4.30 p.m., and told him that if he pays amount, he would obtain connection at the earliest. P.W.2 had replied him that he would pay the bill amount first and thereafter, he would see him. Later on 30.07.2009, when he had gone to the EB Office and enquired the Assistant Engineer, he had informed that the approximate fees would be Rs.15,000/- and he had instructed him to see the accused. On the next day, P.W.2 had gone to the Office of A.E., where A.E. was not there and P.W.2 had paid the fees amount of Rs.12,075/- under two receipts Exs.P6 and P7. When P.W.2 had enquired as to when he would be getting connection, the accused had informed him that if he pays Rs.2,000/- to him, he would get the connection and informed him that checking was going in his office and asked him to come later. P.W.2 had once again gone to the EB Office on 11.08.2009 at about 10.30 a.m., and on that day also the Assistant Engineer was not there and when he had enquired the accused, the accused told him that if the amount is paid, he would get the connection and had informed that he would come and collect the money at his shop in the evening. Since P.W.2 was not inclined to pay the said amount, he had taken four Rs.500/- notes and gone to the office of the Inspector of Police/P.W.8., and given an oral complaint and P.W.8 had recorded the same in writing under Ex.P8. Based on the complaint, Ex.P16- First Information Report was registered in Crime No.33 of 2009 against the accused under Section 7 of Prevention of Corruption Act, 1988.

9. P.W.8-Trap Laying Officer, who registered a case, had arranged two official witnesses viz., P.W.3-Thiru R.Govindaraj, Senior Inspector, O/o the Registrar (Housing), Housing Co-operative Society, Chennai and Tr.Ravikumar, Sub Registrar, TNEB., Employees Co-operative Thrift and Credit Societies Ltd., who had reported before P.W.8 at 12.45 p.m., and P.W.8 had introduced the official witnesses to the defacto complainant/P.W.2 and handed over the complaint and First Information Report to the official witnesses and the serial numbers of the bribe money was noted down by P.W.8 and P.W.8 had prepared Sodium Carbonate solution through Head Constable one Muniappan. Thereafter, the trap laying procedure was demonstrated to them and phenolphthalein powder was smeared on the currency notes and Chemical Test was done on the hands of the official witness Ravikumar and the tainted money was entrusted to P.W.2 with an instruction to hand over the same to the accused only on demand and to give signal by changing his wrist watch from left hand to right hand after acceptance of the tainted money by the accused and P.W.3

was instructed to accompany P.W.2 and observe the happenings and Entrustment Mahazar under Ex.P10 was prepared in the presence of P.W.2 and P.W.3 and the official witness Ravikumar. After the scheme of trap was finalized, P.W.8, P.W.2, P.W.3 and Ravikumar went to the shop of P.W.2. While P.Ws.2 and 3 were waiting, around 5.45 p.m., the accused had come to the said shop and when P.W.2 enquired about the E.B connection, the accused had reiterated the earlier demand and accepted the tainted money of Rs.2,000/- (4 x Rs.500/-) from P.W.2in his right hand and counted the same and kept it in his hand and walked towards west from the shop. P.W.2 had given the pre arranged signal and P.W.8 along with police party and official witnesses proceeded to the spot and on identification by P.W.2, arrested the accused, who was walking on the road. Later P.W.8 and the trap witnesses introduced themselves and the accused was taken to nearby police booth in MGR Nagar and the accused kept the tainted money on the table and chemical test was carried out on both the hands of the accused and the same proved positive. Currency notes are marked as M.O.1 series. Thereafter, P.W.8 had collected the solutions in separate bottles (M.O.2 and M.O.3) and sealed the same. Later P.W.8 had enquired the accused about the currencies and the serial numbers of the currency notes were compared with the entries in the Entrustment Mahazar-Ex.P10 and found to be tallied and the same were recovered. Thereafter, P.W.8 arrested the accused and prepared rough sketch under Ex.P17. After advance intimation to the Court, a search was conducted at the house of the accused at Thiruverkadu by P.W.8 in the presence of official witnesses and Search Report under Ex.P19 was prepared. Nothing was recovered during house search and M.O.1 tainted money of Rs.2,000/- and M.O.2 and M.O.3- solutions were produced in Form-95 and thereafter, the case records were handed over to the Deputy Superintendent of Police for further investigation and he was examined as P.W.9. The evidence of P.W.2 regarding the trap proceedings was corroborated by the evidence of P.W.3-accompanying witness and P.W.8-Trap Laying Officer.

10. P.W.9, who took the case for investigation, had recorded the statement of P.W.2/defacto complainant and obtained three original EB receipts under Exs.P5 to P7 from P.W.2 and recorded the statements of P.W.3-Govindaraj, Ravikumar and one Nedumaran-P.W.4, the Assistant Engineer and P.W.8 (Trap Laying Officer). Thereafter, he has also obtained Chemical Analysis Report under Ex.P15 through Court and recorded the

statements of P.W.5-Shanmugam, the Inspector, TNEB., P.W.6-R.Ravi, Foreman, TNEB and P.W.7-Dr.P.Kirubakaran, Scientific Officer and had completed the investigation and submitted a Report to the Directorate of Vigilance and Anti Corruption. Later, he obtained Ex.P1 Sanction Order through Directorate and recorded the statement of P.W.2 and filed the charge sheet against the accused under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. In this case, the accused has not let in any evidence in defence. Based on the above evidence, the appellant/accused was found guilty as stated above.

11. The contention raised by the learned counsel for the appellant is that the prosecution has failed to prove the foundational facts viz., demand and acceptance and when the demand and acceptance have not been proved, the trial Court has erred in convicting the appellant.

12. Now coming to the question of demand, it is the case of P.W.2-defacto complainant that he had applied for 3 phase EB connection on 02.07.2009 and after completion of official formalities, a payment note was raised and P.W.2 was asked to deposit Rs.12,075/- by two receipts viz.,

Exs.P6 and P7. The accused, who has helped P.W.2 to pay that amount, had negotiated with him that if PW2 arranges to pay Rs.2,000/- he would ensure for speedy provision of 3 phase connection. After some time, on 11.08.2009, when P.W.2 had gone to the TNEB Office, P.W.4-Assistant Engineer was not available and the accused had insisted that only on payment of bribe money, 3 phase connection would be given. The accused had informed him that he would collect the amount at his shop in the evening. Since P.W.2 was not inclined to pay the bribe amount, he had given a complaint, based on which, a case was registered and a trap was laid after following the procedures.

13. P.W.8, Trap Laying Officer, after giving due notice to his superior officer, had summoned P.W.3. According to the learned counsel for the appellant, it is claimed that P.W.3 is a stock witness. As per evidence of P.W.3, he is a Government servant and was working as a Senior Inspector in the Co-operative Housing Society, Chennai, and he had been called to be a witness for the trap proceedings after following due procedure. The evidence of P.W.3 is cogent and clear and there is nothing on record to doubt the evidence of P.W.3. Merely because he has assisted the respondent

in another case, he cannot be dubbed as a stock witness. In the present case, there is no suppression of fact and the accused has also admitted the presence of official witness-P.W.3 at the place of trap at the relevant time and P.W.8-Trap Laying Officer has also corroborated with the evidence of P.W.2 and P.W.3.

14. Yet another contention raised by the learned counsel for the appellant is that there was a delay in lodging a complaint which creates suspicion. In this regard, it has to be seen that a normal human tendency is that when a work is not done legally within a particular period, a person gets frustrated and come out with a complaint, which is a natural human conduct and tendency and it cannot be suspected or doubted. Though an argument has been made that non giving of the complaint to the superior officer about the demand creates suspicion, it is to be seen that even as per the evidence of P.W.2-defacto complainant, the Assistant Engineer(P.W.4) was not available on three occasions i.e., on 29.07.2009, 01.08.2009 and 11.08.2009, when P.W.2 had gone to the EB office and thereby, the contention of the learned counsel for the appellant cannot be accepted.

15. Further, the learned counsel for the appellant has contended that the appellant is an innocent person and he has been made as a scapegoat since he had demanded the money on the instructions of P.W.4-Assistant Engineer and in support of his contention the learned counsel has relied on the judgment of the Apex Court in ***Trilok Chand Jain Vs. State of Delhi ((1975) 4 Supreme Court Cases 761)*** .

16. In respect of the above submission, there is absolutely nothing on record to show that the Assistant Engineer had either demanded the money himself or that he had instructed P.W.2 to hand over the money to the appellant/accused on his behalf. The facts in the above judgment would not be applicable to the case on hand as the appellant in the above cited judgment was sent to collect the bribe money for the Inspector, who is the co-accused.

17. When P.W.2 had deposed cogently and categorically as stated above that the appellant had asked him to get ready with the money stating that he would come to his shop in the evening and had also received

Rs.2000/- as gratification, the initial demand has been proved. Further, the appellant/accused had come to the shop of P.W.2 and demanded the amount and received the same in the presence of P.W3, the official witness. The evidence of P.W.3 corroborated the evidence of P.W.2 with regard to the demand and acceptance. Later, based on the signal, P.W.8, the Trap Laying Officer along with his police party have intercepted the accused nearby the shop and had recovered the tainted money from him. Phenolphthalein Test conducted on the appellant/accused has been proved positive and the serial number of the tainted money recovered also tallied with the Entrustment Mahazar-Ex.P10.

18. Though the learned counsel appearing for the appellant/accused claimed that there is discrepancy with regard to the receipt of money either in the right hand or in the left hand and that a claim was made that he was differently abed person, no such evidence in defence has been let in by the accused to disprove the case of the prosecution. Further, no probable explanation has been given by the accused for his presence near the shop of P.W.2. Though it is claimed by the learned counsel for the appellant/ accused that there are discrepancies with regard to the presence of one

Chellakannu, who is the friend of the accused, it is not the case of the prosecution that the accused was seen along with Chellakannu at the time of trap. Further, it is the contention of the prosecution that Chellakannu was not present at the time of trap and only after arrest since Chellakannu is a friend of the accused, the arrest intimation was served on him. Non-examination of Chellakannu would not make any difference. In this case, if the claim of the appellant/accused is that Chellakannu is his friend and they were present at the time of trap, the accused could have examined him as a defence witness to establish his case. In the present case, as already discussed, the explanation offered by the accused for being present at the place of trap is neither proper nor probable. Further, the recovery of the tainted money from the accused at the place of trap has not been disputed by the accused and the defence raised by the accused is that while he was walking along with his friend near the shop of P.W.2, P.W.2 had placed the money in the pouch of the two-wheeler and that he was compelled by P.W.8 to take the money and that he had taken it in is left hand and handed over to P.W.8 since his right hand was handicapped, have not been proved by evidence in defence.

19. Further the Phenolphthalein Test conducted on both the hands of the appellant/accused has not been disputed and the test conducted on both the hands had also proved positive. The prosecution, as stated above, has clearly and cogently proved the demand made by the accused for effecting 3 phase E.B connection to the house of P.W.2-defacto complainant on 31.07.2009 and 11.08.2009 and receipt of the tainted money as illegal gratification by visiting the shop of P.W.2. When the demand and acceptance have been proved by the prosecution, automatically, there is a presumption under Section 20 of the Prevention of Corruption Act. Though a weak defence has been raised that the appellant's work was completed earlier and that the amount was received only on the instruction of P.W.4-Assistant Engineer, no legal evidence, much less by preponderance of probabilities, has been let in by the appellant to rebut the presumption.

20. The judgment relied on by the appellant/accused will not be applicable to the facts of this case since in the case referred above, the bribe money is stated to have been innocently received by the appellant on the

instruction given by his official superior(Inspector), whereas it is not so in this case.

21. Thus, this Court after threadbare analysis of the evidence and judgment is satisfied that the prosecution has proved its case with sufficient oral and documentary evidence beyond all reasonable doubts and is satisfied that the trial court had rightly found the appellant/accused guilty and convicted him for the offence under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. This Court finds no reason or scope for interference with the findings or conviction made by the trial Court.

22. However now coming to the question of sentence, it seen that at the time of commission of the offence on 11.08.2009, the age of the appellant/accused was 50 whereas now, the age of the appellant/accused would be 63 and he would have been retired from the service. Considering the above and also the provision of the Prevention of corruption Act, 1988 prior to its amendment in the year 2014, this Court is inclined to reduce the sentence alone imposed by the trial Court in respect of the offence under

Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act to one year while confirming the sentence imposed under Section 7 of the Prevention of Corruption Act and the fine amount imposed for both offences.

23. In the result, this appeal is allowed in part to the limited extent of modifying and reducing the sentence alone imposed by the trial Court. The conviction made by the trial Court against the appellant/accused for the offences under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 shall stand confirmed. Accordingly, the sentence of rigorous imprisonment for one year imposed on the appellant/accused for the offence under Section 7 of Prevention of Corruption Act, 1988 is confirmed. However, the **Sentence of rigorous imprisonment for two years imposed on the appellant/accused for the offence under Section 13(2) read with 13(1)(d) alone is modified and reduced to a period of one year rigorous imprisonment**. The sentence of fine imposed by the trial Court, with the default sentence thereon, is maintained. The sentences shall run concurrently. The period of imprisonment suffered so far, if any, shall be set off under Section 428 of Cr.P.C. The trial Court shall take

necessary steps to secure the appellant/accused to undergo the remaining period of sentence.

24. With the above modification, the Criminal Appeal is allowed in part.

09.11.2023.

Index:Yes/No

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Note to Office :

1. **Registry is directed to return the original documents, if any, to the trial Court.**
2. **Registry is directed to issue Judgment copy forthwith.**

To

1.The Special Judge for the cases under
Prevention of Corruption Act,
Chennai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Special Investigation Cell, Chennai.

3.The Additional Public Prosecutor,
High Court, Chennai.

A.D.JAGADISH CHANDIRA,J.

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Pre-delivery Judgment in
Criminal Appeal No.798 of 2016

09.11.2023