IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	02.03.2023
Pronounced on	:	09.06.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.383 of 2020

P.Rajasekaran .... Appellant

Vs.

The State, represented by
Inspector of Police
Vigilance and Anti Corruption Special
Investigation Cell
Alandur,
Chennai- 600 016
(Crime No.32/PC/2009/SIC) ... Respondent

Prayer: Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed in C.C.No.6 of 2012 dated 17.09.2020 on the file of Special Court for the cases under Prevention of Corruption Act at Chennai – 600 104.

For Appellant : Mr.R.Sankara Subbu

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed seeking to set aside the conviction and sentence imposed in C.C.No.6 of 2012 dated 17.09.2020 on the file of Special Court for the cases under the Prevention of Corruption Act, Chennai.

2. The respondent police registered the case in Crime No.32 of 2009 against the accused/appellant herein for the offences under Section 7 of Prevention of Corruption Act and after investigation, the respondent police laid the charge sheet before the Special Court for the cases under the Prevention of Corruption Act, Chennai, for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act. The learned Special Judge, taken the charge sheet on file in C.C.No.6 of 2012 and after completing the formalities, framed the charges for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

3. After framing of charges and completing the formalities, in order

to prove the case of the prosecution during trial before the trial Court, on the side of the prosecution, totally 11 witnesses were examined as P.W.1 to P.W.11 and 13 documents were marked as Ex.P.1 to Ex.P.13 and besides 5 material objects were exhibited as M.O.1 to M.O.5.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. The accused denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in however, 3 documents were marked as Exs.D.1 to D.3.

5. On conclusion of trial after hearing the arguments advanced on either side and considering the materials, the trial Court found the guilt of the accused for the offences under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and convicted and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for a further period of three months for the offence under Section 7 of

Prevention of Corruption Act; to undergo two years rigorous imprisonment and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for a further period of three months for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Both the sentences were ordered to be run concurrently and the period of sentence which was already undergone by the accused was ordered to be set off under Section 428 Cr.P.C.

6. Aggrieved over the said Judgment of conviction and sentence, the accused has filed the present appeal before this Court.

7. The specific case of the prosecution is that the defacto complainant had applied for plan approval of 1350 sq.ft. in Velacherry Village in S.Nos.378, 378/25, 278/26 and he had also remitted the prescribed fees of Rs.375/- along with the relevant documents in the Chennai Corporation on 21.10.2008. Since the said land was an unapproved lay out, the same was referred to the CMDA on 28.01.2009 after field inspection. The said application was received by the CMDA authorities and again a field inspection was conducted on 19.02.2009.

After receiving an intimation from the CMDA, the defacto complainant sent a separate application to the Chennai Corporation for demolition of the exiting building and subsequently, the defacto complainant received a demolition order from the Corporation after paying the demolition fees. On 09.06.2009, the defacto complainant submitted the demolition order to the CMDA and subsequently, on 18.06.2009, he submitted the revised copy of plan and attested copy of Patta along with title document. The officials of the CMDA, scrutinized the documents and directed the defacto complainant to pay a sum of Rs.2,23,000/- as processing fees. Accordingly, the defacto complainant paid the said amount and handed over the receipt to the CMDA on 23.07.2009 and he approached the CMDA for approval of his plan. On 04.08.2009, the defacto complainant met the appellant during which, the appellant demanded a sum of Rs.5,000/- from the defacto complainant for completing his work related to plan approval. Since the defacto complainant did not like to give the bribe money to the appellant, he gave a complaint to The Trap Laying Officer/P.W.9 and after enquiry, the Trap Laying Officer/P.W.9 registered a case and arranged for trap to get the appellant red handed. After registering the case and after conducing pre-trap demonstration, the defacto complainant along with the official witness/P.W.3 went to the office of the appellant on 06.08.2009 at about 12.50 hours and enquired about his plan approval. At that time, the appellant reiterated his demand and also directed them to wait in ONGC Canteen in the ground floor. As per the direction of the appellant, the defacto complainant along with official witness/P.W.3 was waiting in the ONGC Canteen. At that time, the appellant who came to the Canteen, reiterated his demand and also accepted the bribe amount of Rs.5,000/- from the defacto complainant at about 13.10 hours. Thereafter, on seeing the pre-arranged signal from the defacto complainant, the Trap Laying Officer/P.W.9 along with his team and P.W.10 who is also an official witness, approached the appellant and caught hold of the appellant red handed by following the procedures. Thereafter, the Trap Laying Officer/P.W.9 handed over the case to the P.W.11.

8. The learned counsel for the appellant would submit that the appellant never demanded any money as illegal gratification from the

defacto complainant who was examined as P.W.2 in this case. In fact, the planning permission was already granted and the file pertaining to the P.W.2 was already forwarded to the Corporation even two days prior to the date of alleged trap and hence, the claim of the prosecution that for completion of work of P.W.2 with regard to plan approval, the appellant who is a public servant, demanded money as illegal gratification from P.W.2, cannot be accepted. Further he would submit that the case of the prosecution is that on 04.08.2009, the appellant made a pre-trap demand in his office from P.W.2. But the fact remains that on the above said date, the appellant was not available in his office and he had gone for field work. The evidence of P.W.6 would prove the said fact. P.W.6 who was the Driver in the CMDA Department, while examining as witness before the Court, has clearly deposed that on 04.08.2009, he along with the appellant and the Deputy Planner left the office of the CMDA at 10.00 a.m. and returned to office only at 5.45 p.m. and therefore, there was no opportunity for P.W.2 to meet the appellant in his office on the said date who has no role to play in the processing of the planning permission. Since the appellant was not present in his office on the said date, the case of the prosecution becomes false. When the appellant was not available in his office on the said date, its is not known how P.W.2 could have made demand from P.W.2. The prosecution has failed to establish the presence of the appellant in his office on the said date and thereby, the prosecution has not proved the foundational fact that the appellant made a pre-trap demand and subsequently he reiterated his demand on the date of trap and accepted the same from P.W.2. He would submit that on the date of demand, no file pertaining to P.W.2, was in the hands of the appellant. Further, the prosecution has not established that the appellant demanded illegal gratification from P.W.2 stating unless he pays the same, the appellant would not have performed his duty. Therefore, in the absence of the same, the appellant cannot be convicted only based on the complaint given by P.W.2 and the reason for giving the complaint against the appellant is best known to P.W.2. He would further submit that the tainted amount of Rs.5,000/- was thrust into the pocket of the appellant by P.W.2 and he did not know the contents and amount of Rs.5,000/- but the Investigating Officer/P.W.11 put up a story as if, the appellant told that it was gifted to him by P.W.2 and that the entire case is a stage managed and motivated one by P.W.11 in order to degrade the appellant who was in the verge of retirement. Even P.W.4/Deputy Planner in the Area Plan Unit Division, in his evidence has categorically stated that on 20.07.2009 itself the planning permission was granted and the same was informed to P.W.2 on 04.08.2009 itself and subsequently, the same was also sent to the Corporation. Ex.P.7/file containing the details of planning permission of P.W.2's property in the CMDA also proved the same. Even P.W.2 himself has stated that he has mistakenly identified the appellant as if, he is a Grade-III, H Section and the said mistake is also fatal to the case of the prosecution. The trial Court failed to appreciate the entire facts that the appellant has nothing to do with the approval of plan and also much earlier to the trap proceedings, the approval was granted and sent to the Corporation and on the date of trap, no file of P.W.2 with regard to planning permission was pending in the CMDA office in which the appellant was working. The trial Court failed to appreciate the said facts and erroneously convicted the appellant for the charged offences which warrants interference of this Court. He would further submit that the person who took samples to the Forensic Lab, was not examined and the form 91 submitted by the prosecution before the Special Judge is not valid and there is a violation of Rule 47 which is also fatal to the case of the prosecution. Further, the learned counsel placed reliance on the Judgments of the Hon'ble Supreme Court and also this Court as follows;

> *1. Neeraj Dutta Vs. State (Govt. of N.C.T. Of Delhi) [in 2022 LiveLaw (SC) 1029]*
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> *2. K.Shanthamma Vs. The State of Telengana [in Criminal Appeal No.261 of 2022 dated 21.02.2022]*
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> *3. Noor Aga Vs. State of Punjab and another [in 2008 16 SCC 417]*
>
> *4. Satvir Singh Vs. Stte of Delhi through CBI [2014 13 SCC 143]*
>
> *5. N.Vijayakumar Vs. State of Tamil Nadu [in 2021 3 SCC 687]*
>
> *6. Thulasiram Vs. State [in Crl.A. (MD) No.77 of 2007 dated 09.11.2011]*

9. The learned Additional Public Prosecutor appearing for the respondent police would submit that the defacto complainant was examined as P.W.2 in this case. When the appellant was working as a planning Assistant Grade -IV, A Section in the CMDA, Egmore, Chennai,

the defacto complainant/P.W.2 had applied for planning permission for the construction of his plot in Velacherry, with the Chennai Corporation and since the plot of the defacto complainant/P.W.2 was un-approved one, the same was forwarded to the CMDA for approval. The CMDA officials and the appellant have made spot visit on the site of the defacto complainant/P.W.2 and the defacto complainant/P.W.2 had also paid the necessary fees as per the CMDA norms. On 04.08.2009, when the defacto complainant/P.W.2 met the appellant for ascertaining the position of approval, the appellant demanded a sum of Rs.5,000/- from him as illegal gratification. Since, the defacto complainant/P.W.2 was unwilling to give the bribe amount to the appellant, he preferred a complaint before the Trap Laying Officer/P.W.9 who also registered the case and after registering the case, initiated the trap proceedings by following the formalities and summoning the Chief Engineer, Agricultural Engineering Department, Nandanam, requesting him to send two witnesses. Accordingly, the Chief Engineer sent two of his staff from their office who were examined as P.W.3 and P.W.10. Subsequently, the Trap Laying Officer/P.W.9 formed a team and conducted the pre-trap demonstration in the presence of the official witnesses/P.W.3 and P.W.10. After completing the pre-trap demonstration, sent the defacto complainant/P.W.2 to the office of the appellant along with P.W.3/Official witness and P.W.10 accompanied with the Trap Laying Officer/P.W.9. When the defacto complainant/P.W.2 along with the official witness/P.W.3 approached the office of the appellant, the appellant reiterated his earlier demand and thereafter, the defacto complainant/P.W.2 handed over the tainted money to the appellant. P.W.3 who is a shadow witness witnessed the same. Subsequently, after receiving the pre-arranged signal from P.W.2, the Trap Laying Officer/P.W.9 along with P.W.10 and other team members approached the appellant, conducted Phenolphthalein test in the fingers of the appellant which resulted positive and caught hold of the appellant red handed and the money which was recovered from the appellant, was matched with the entrustment mahazar/Ex.P.4. Subsequently, recovery was effected through recovery mahazar and after completing the formalities, the Trap Laying Officer/P.W.9 handed over the case to P.W.11. P.W.11 after completing the investigation, laid charge sheet as stated above. Therefore, from the evidence of P.W.1 to P.W.11, the prosecution has proved its case beyond all reasonable doubt that the appellant demanded illegal gratification from the defacto complainant/P.W.2 other than the legal remuneration for doing public service and also received the same and subsequently, the same was also recovered. Therefore, the basic ingredients to constitute the offence under Section 7 of Prevention of Corruption Act viz., pre-demand, acceptance and recovery were proved in the manner known to law and the phenolphthalein solution collected during the trap proceedings, were sent to the Forensic Lab which also resulted positive. Therefore, the prosecution has proved its case beyond all reasonable doubt that the appellant being an public servant, demanded illegal gratification from the defacto complainant/P.W.2 and also accepted the same and thereby, he has committed the offences under Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act. Once the foundational fact that the demand, acceptance and recovery were proved by the prosecution in the manner known to law, there is a statutory presumption under Section 20 of the prevention of Corruption Act that the accused is the one who demanded and accepted the bribe money from the defacto complainant and it is for the accused to rebut the presumption in the manner known to law, whereas in this case, the appellant has not rebutted the presumption in the manner known to law. Further, at the time of recovery, when the explanation was offered by the appellant, the appellant stated that the defacto complainant/P.W.2, voluntarily gifted the said amount to the appellant which is not acceptable and it is not legally sustainable. Therefore, the trial Court rightly appreciated both the oral and documentary evidence and rightly convicted the appellant for the said charges and sentenced as stated above. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and also perused the materials available on record.

11. In order to substantiate the case of the prosecution, as already stated, on the side of the prosecution, 11 witnesses were examined and out of the 11 witnesses, the defacto complainant was examined as P.W.2.

12. Perused the entire evidence of P.W.2 wherein, he has clearly narrated the entire above said incidents.

13. The shadow witness one who accompanied the defacto complainant/P.W.2 at the time of trap proceeding, was examined as P.W.3 and he has also clearly deposed that as per the instructions of his Superior, he went to the office of the Trap Laying Officer wherein, the Trap Laying Officer introduced the defacto complainant/P.W.2 to him and thereafter, conducted the pre-trap demonstration and prepared entrustment mahazar in which, the numbers of the tainted currency notes were mentioned and subsequently, he accompanied the defacto complainant/P.W.2 to the office of the appellant wherein, the appellant reiterated his earlier demand and subsequently accepted the same. Thereafter on seeing the pre-arranged signal from the defacto complainant/P.W.2, the Trap Laying Officer/P.W.9 along with his team approached the appellant and caught him red handed and subsequently, conducted phenolphthalein test and recovered the tainted money from the appellant. The evidence of P.W.3, corroborated the evidence of the defacto complainant/P.W.2.

14. One of the mahazar witnesses was examined as P.W.10 who has also spoken that as per the instruction of his Superior, he went to the office of the Trap Laying Officer wherein, he introduced the defacto complainant/P.W.2 to him and conducted the pre- trap demonstration and also explained the trap proceedings to him and the defacto complainant/P.W.2 and another official witness/P.W.3 and they also prepared entrustment mahazar. Thereafter, the defacto complainant/P.W.2 took the tainted currency notes and went to the office of the appellant along with P.W.3 and he accompanied the Trap Laying Officer/P.W.9. After receiving pre-arranged signal from the defacto complainant/P.W.2, they went to the office of the appellant where the Trap Laying Team conducted phenolphthalein test in the hands of the appellant and caught him red handed recovered the tainted money from the appellant and also prepared recovery mahazar. The evidence of P.W.10 also corroborated the evidence of P.W.2 and P.W.3.

15. The Trap Laying Officer was examined as P.W.9 and he has also corroborated the evidence of P.W.2 and P.W.3.

16. The sanctioning authority was examined as P.W.1 who has spoken about according sanctioning for prosecution based on the materials placed before him.

17. P.W.4 and P.W.5 who were working as Deputy Planner in CMDA have stated that the planning permission was already granted to the defacto complainant and the same was despatched to Chennai Corporation on 04.08.2009 itself.

18. Though the learned counsel for the appellant relied on the evidence of P.W.6 and the documents viz., Ex.D1 and Ex.D2/the Movement Register of the vehicle No.TN 01R 5692 on 04.08.2009 and Xerox copy of the Log Book of the car, the said documents have not proved that the appellant was not in the office at the time alleged pre-demand and he was present with P.W.6 on the said date from 10.00 a.m. to 5.45 p.m. Further, during re-examination, he has admitted that the appellant had not signed in Ex.D2. Even in the Movement Register, it

was not seen that at what time, the appellant left and at what time he came back to his office. Therefore in the absence of any specific material, the defence of the appellant that on the date of pre-trap demand he was not in the office, is not acceptable.

19. In this case, on a perusal of the entire evidence of P.W.2, P.W.3, P.W.9 and P.W.10 shows that the prosecution has proved that after the pre-trap demonstration, they left from the vigilance office at 12.15 p.m. and they reached the office of the appellant at 12.50 p.m. and as instructed by the Trap Laying Officer, P.W.2 and P.W.3 went inside the office of the appellant and thereafter, as per the instruction of the appellant, they went to the ONGC Canteen in the ground floor at about 1.10. p.m. wherein, based on the subsequent demand made by the appellant, P.W.2 handed over the tainted money to the appellant in the presence of P.W.3 and immediately, he came out from the canteen and showed the pre-arranged signal to P.W.9. On seeing the same, P.W.9 along with his team, approached the appellant and caught him read handed by following the procedures as contemplated in the manual of

Vigilance and Anti Corruption Act and recovered the tainted money from the appellant through seizure mahazar/Ex.P.5. Therefore, the prosecution has proved that the appellant demanded money from the defacto complainant/P.W.2 and accepted the same other than the legal remuneration and the same was also recovered by the Trap Laying Officer/P.W.9 in the manner known to law and after recovery of the tainted money, the numbers of the recovered currency notes were compared with entrustment mahazar which were also tallied with each other. Once the demand, acceptance and recovery are proved in the manner known to law, then the Court can come to the conclusion that the prosecution has proved the foundational fact of obtaining illegal gratification and it is for the appellant to rebut the presumption under Section 20 of Prevention of Corruption Act.

20. A reading of the entire materials shows that the appellant has taken the defence of Alibi. Once the accused takes the defence of Alibi, it is for the accused to establish that he was not in the said place at the relevant point of time and he was available in somewhere else.

21. The main defence of the appellant is that he was not in his office on the date of alleged pre-demand and the same was proved by the evidence of P.W.6. However, the appellant has not established the same in the manner known to law. His further defence is that already the file of the P.W.2/defacto complainant was sent the Corporation even two days prior to the date of trap and the same was also proved by the evidence of P.W.4 and P.W.5. Even assuming that the file of the defacto complainant was already moved from CMDA to Corporation, there is no material to show that the same was communicated to P.W.2/defacto complainant and in the absence of the same, it cannot be stated that there was no demand at all. Until the approval is received, the defacto complainant may not know what had happened in the Government Department and who are all the officers dealing with it.

22.The evidence of P.W.2/the defacto complainant shows that the appellant demanded bribe from him and therefore, he made a complaint before P.W.9/Trap Laying Officer and subsequently trap was laid and in the presence of P.W.3/shadow witness, the appellant has reiterated his demand and based on the demand, the defacto complainant gave the money to the appellant and the same was accepted by the appellant which was witnessed by P.W.3/shadow witness. Thereafter, on seeing the pre-arranged signal from P.W.2/defacto complainant, P.W.9/Trap Laying Officer proceeded and caught the defacto complainant red handed and after completing the formalities, recovered the tainted money from the appellant. P.W.10/official witness also witnessed the same.

23. Therefore, from the evidence of P.Ws.2, 3, 9 and 10 the prosecution has proved its case beyond all reasonable. Since, P.W.3 and P.W.10 are also working in the Government Department, they may not have animosity with the appellant. When the CMDA had already granted approval to the defacto complainant and sent it to the Corporation, there is no reason for the defacto complainant to prefer a false complaint against the appellant before the P.W.9/Trap Laying Officer.

24. Once the prosecution proved the demand, acceptance of bribe and the recovery of the money, Section 20 of Prevention of Corruption Act would come into play. It is a settled proposition of law that once prior demand, acceptance and recovery of money are proved, there is a

presumption under Section 20 of the Prevention of Corruption Act that the accused accepted the gratification other than the legal remuneration and the accused has to rebut the presumption in the manner known to law and unless the contrary is proved by the accused, the Court can safely come to the conclusion that the accused has committed the offence under Section 7 of the Prevention of Corruption Act.

25. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court and also this Court in the judgments referred to by the learned counsel for the appellant. However, the facts and circumstances of those cases are different from the case on hand. In this case, the prosecution proved the foundational fact beyond all reasonable doubt. Therefore, the citations referred to by the learned counsel for the appellant are not applicable to the present case on hand.

26. Under these circumstances, this Court being a first appellate Court as a final Court of fact finding, while re- appreciating the entire evidence, finds that the appellant has committed the charged offences and

the trial Court has rightly appreciated the evidence and convicted the appellant as stated above. This Court finds no perversity in the appreciation of evidence by the trial Court and there is no merit in the appeal and the appeal is liable to be dismissed.

27. Accordingly, this Criminal Appeal stands dismissed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

09.06.2023

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Index:Yes/No

To

1. The Special Court for the cases under Prevention of Corruption Act at Chennai

2. Inspector of Police
   Vigilance and Anti Corruption Special
   Investigation Cell
   Alandur,
   Chennai- 600 016

3. The Public Prosecutor Officer, High Court, Madras

4. The Section Officer, Criminal Section, High Court, Madras.

P.VELMURUGAN, J

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Pre-Delivery Order in
Criminal Appeal No.383 of 2020

09.06.2023