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Crl.A.No.152 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.152 of 2014

State Represented by
The Public Prosecutor,
High Court,
Madras.

... Appellant

Vs.

A.Arunachalam

... Respondent

Prayer:Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 18.11.2013 passed in Special Calendar Case No.55 of 1999 on the file of the Court of the Special Judge/Chief Judicial Magistrate, Salem and to set aside the judgment of acquittal of the respondent/accused and convict the respondent/accused for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

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

For Respondent : Mr.R.Ganesh
Legal Aid Counsel



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JUDGEMENT

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This Criminal Appeal has been filed against the judgment dated 18.11.2013 passed in Special Calendar Case No.55 of 1999 on the file of the Court of the Special Judge/Chief Judicial Magistrate, Salem.

2. The Inspector of Police, Vigilance and Anti-Corruption, Salem has registered the case against the respondent in Crime No.2/AC/1997 for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and laid a charge sheet before the Court of Special Judge cum Chief Judicial Magistrate, Salem. The learned Special Judge has taken the case on file in Special Calendar Case No.55 of 1999.

3. Before the trial court, in order to substantiate the charges, on the side of the prosecution, totally 16 witnesses were examined as P.W.1 to P.W.16 and 28 documents were marked as Ex.P1 to Ex.P28. Besides nine material objects were exhibited as M.O.Nos.1 to 9. On completion of examination of prosecution witnesses, when incriminating circumstances culled from the evidence of prosecution witnesses were put before the accused by questioning



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under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty.

On the side of the defence, no oral and documentary evidence was produced.

4. After completing trial and hearing of arguments advanced on either side, the learned Special Judge found that the prosecution has not proved its case beyond all reasonable doubts and extended benefit of doubts in favour of the accused and thereby acquitted him. Challenging the said judgment of acquittal passed by the learned Special Judge, the State has filed this Criminal Appeal.

5. Specific case of the prosecution is that the respondent was working as Village Administrative Officer of Thenkumarai Village, Gangavalli Taluk, Salem District. In order to get free agricultural electricity power supply to his field, the defacto complainant filed an application before the Tamil Nadu Electricity Board along with relevant document in which the survey number was noted as 74/1. But in the application, he has mentioned the survey number as 74/3. Hence, he was instructed to get another certificate in correct form indicating the change of survey number from Village Administrative Officer.



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Hence, the defacto complainant approached the respondent/accused, who is the Village Administrative Officer, and requested him to issue the certificate indicating the change of survey number. The respondent demanded Rs.1000/- as gratification other than legal remuneration in order to issue the certificate as required by the defacto complainant. Hence the complaint.

6. Learned Additional Public Prosecutor appearing for the appellant submitted that in order to get free agricultural electricity power supply to his field, the defacto complainant filed an application before the Tamil Nadu Electricity Board along with relevant document in which the survey number was not tallied with the application. Hence, he was instructed to get another certificate in correct form indicating the change of survey number to show that the well and property belonged to him. When the defacto complainant approached the Tahsildar, in turn, he instructed the defacto complainant to approach the Village Administrative Officer concerned, who is the respondent herein. He had approached the respondent for getting relevant certificate for which he had demanded Rs.1,000/- and he had given Rs.500/- and got the same. He further submitted the certificate issued by the respondent/accused to



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the Electricity Board concerned, who had refused the same and also instructed to get the certificate as per the draft certificate given by the Electricity Board Office. The defacto complainant again requested the respondent/accused to issue certificate as per the model certificate Ex.P2, for which the respondent initially refused to issue the certificate and later he had demanded Rs.1000/- as bribe, in order to facilitate him. On 06.02.1997 the accused reiterated his earlier demand and again on 10.02.1997, the accused demanded and accepted Rs.1000/- from the defacto complainant in the presence of official witness P.W.3, but he returned the amount to the said complainant. Again on 11.02.1997, when the complainant was out of station, the respondent along with his assistant P.W.6 went to the complainant's house and enquired his wife about the person who had accompanied with him on 10.02.1997 and reiterated to bring the money. Wife of P.W.2 was examined as P.W.4. Since the complainant did not like to give bribe, he approached P.W.15/Inspector of Police, vigilance and Anti Corruption, Salem. On enquiry, they registered the case and arranged for pre-trap proceedings. P.W.3 who is the shadow witness and in his presence, pre-trap proceeding was conducted. On the day of trap proceeding, P.W.2-defacto complainant went along with P.W.3-shadow



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witness to the office of the respondent. On seeing the defacto complainant, the respondent/accused reiterated his demand. He handed over the money to the respondent. Thereafter P.W. 2 showed pre-planned signal and noting the same, P.W.15 went to the office and conducted phenolphthalein test which resulted positive. After conducting phenolphthalein test, P.W.15 enquired about the bribe from P.W.2. He informed that he has given to his assistant one Periyasamy. Subsequently, based on the information given by the respondent, the bribe money was recovered through seizure mahazar from him. After investigation, they laid a charge sheet.

7. She further submitted that in order to substantiate the charges framed against the accused, the prosecution has examined 16 witnesses, out of which P.W.2 is the defacto complainant who has spoken about the earlier demand and subsequent demand. P.W.4 is the wife of P.W.2 who has spoken about the visit of the respondent along with his assistant and also she stated that the respondent enquired about her husband and asked him to bring money. P.W.6 is the Village Assistant has also admitted that he went along with the respondent to the house of the defacto complainant. P.W.5 has stated that the



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respondent received money from him as and when he required. P.W.7 has stated that he only drafted the certificate as per model certificate. P.W.8-Foreman has clearly stated in order to get free electricity power supply ,he issued notice Ex.P2 to the defacto complainant and asked him to submit the relevant documents for getting connection. P.W.9 who was working as J.E in the Electricity Department has stated that the certificate given by the defacto complainant does not meet out the requirement and it does not reflect the actual ownership and therefore he asked to get a correct certificate which leads the defacto complainant to approach the respondent. P.W.10-who was working as Commercial Inspector in the Electricity Department has deposed that as per instruction of the Superior officer, he has given the model certificate to the defacto complainant. From the evidence of prosecution witnesses, it is proved that the defacto complainant approached the Village Administrative Officer/the respondent herein again and again in order to meet out his requirement with the electricity department. P.W.12 is the Tahsildar has stated that the defacto complainant requested him to take action against the respondent. P.W.15 is the trap laying officer.



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8. From the evidence of P.W.2-defacto complainant, P.W.3-shadow witness and also P.W.4 wife of P.W.2, prosecution has proved the earlier demand, subsequent demand and acceptance of bribe. From the evidence of P.W.3 and P.W.15 the prosecution has proved the recovery. Other witnesses have spoken about the reason for the complainant to approach the Village Administrative Officer. From the abovesaid evidences, the prosecution has proved its case beyond all reasonable doubt. The trial court deviated the scope and object of the Prevention of corruption Act has given weight to the immaterial discrepancies and contradictions, acquitted the respondent as if the prosecution has not proved the case beyond all reasonable doubt and extended the benefit of doubt on the accused which warrants interference of this Court.

9. Despite several opportunity, neither the respondent nor his counsel appeared and ready to argue the matter. Hence, vakalat of the counsel for the respondent on record was cancelled and legal aid counsel was appointed to argue the matter on behalf of the respondent.



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10. Learned legal aid counsel appearing for the respondent would submit that when the defacto complainant approached the respondent for the certificate he issued the same. Again he requested to issue the certificate as per the draft certificate issued by the Electricity Board which he is not entitled to. Further the defacto complainant insisted him to accept the money. He refused to receive the money. Since the respondent did not yield the demand of the defacto complainant, in order to take vengeance, the defacto complainant lodged a false case against the respondent. Unfortunately, the Inspector of Police, Vigilance and Anti Corruption has also without verifying the same, registered the case. On 10.02.1997, they arranged for trap proceeding and they have not succeeded. Subsequently, they registered a false case against him. Further he submitted that recovery was not effected directly from him. The bribe amount was recovered from one Periyasamy who is the neighbour of the respondent. However, the said Periyasamy was not examined as witness by the prosecution. P.W.2 has not come to the court with clean hands. He suppressed the fact that he tried to get a false certificate from him. When he refused to give the certificate as he expected, in order to take vengeance, registered a false



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complaint against the respondent. The bribe amount was also not recovered from him directly and demand was also not proved. Defacto complainant and P.W.3 themselves have stated in their evidence that at the first time ie., on 10.02.1997 the respondent refused to receive the money. Once he refused the bribe, again and again the complainant approached the respondent which itself creates serious doubt. Since the trial Court has rightly appreciated the oral and documentary evidence adduced by the prosecution witnesses and rightly acquitted the respondent.

11. Further, while interfering with the judgment of acquittal, the appellate Court must satisfy that there is compelled circumstances warranting interference. In this case no such circumstances warrants interference of this Court. The trial Court has rightly appreciated the oral and documentary evidence adduced by the prosecution witnesses and rightly acquitted the respondent and hence, there is no merit in the appeal and the same is liable to be dismissed and the judgment of the trial court is liable to be confirmed.



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12. Heard the learned Additional Public Prosecutor appearing for the appellant and the legal aid counsel appearing for the respondent and perused the materials available on record.

13. The specific case of the prosecution is that in order to get the certificate for getting free electricity power supply for his agricultural land, the defacto complainant approached the respondent/accused, for which, the respondent demanded money and accepted the same, which is illegal gratification other than legal remuneration. Since the respondent is a public servant, he has committed offences punishable under Sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act.

14. In order to prove the case, on the side of the prosecution, totally sixteen witnesses were examined and 28 documents were marked. Besides, nine material objects were produced. Out of 16 witnesses, prime witness P.W.2 is the defacto complainant who set the law into motion by filing the complaint-Ex.P4, before P.W.15-Inspector of Police, Vigilance and Anti Corruption, Salem.

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15. Evidence of P.W.2 is very clear that he received notice from the Electricity Department, in which he was instructed to submit certain Revenue documents. Hence, the defacto complainant approached the respondent. Though the respondent obtained a sum of Rs.500/- and had issued certificate and when the same was produced before the Electricity Department, they directed the defacto complainant to submit it in prescribed format. Since the certificate submitted by him does not meet out the requirements of the Electricity Department, again the defacto complainant approached the respondent. Initially, the respondent refused, but subsequently he accepted to issue the certificate, for which, he demanded sum of Rs.1000/- as bribe. On 06.02.2997, the accused reiterated his earlier demand and again on 10.02.1997, the accused demanded and accepted Rs.1000/- from the defacto complainant in the presence of official witness P.W.3, but he returned the amount to the said complainant. Again, on 11.02.1997, when the complainant was out of station, the respondent along with his Assistant-P.W.6, went to complainant's house and enquired his wife about the person who had accompanied with him on 10.02.1997 and reiterated to bring the money. Since the certificate issued by the respondent does not meet out the requirements and that the respondent also



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demanded bribe, the complainant did not like to give money to the respondent.

Hence, he filed a complaint before the Inspector of Police, Vigilance and Anti Corruption, Salem. They arranged for trap proceedings by summoning the witnesses in usual course.

16. P.W.3, who is the shadow witness, has clearly stated that on the date of occurrence, ie., on 17.02.1997, the respondent reiterated his demand. When the defacto complainant gave the money, the respondent received the same and gave it to one Periyasamy, who is his neighbour. After receiving pre-planned signal, P.W.3 and other trap laying officers, went to the office. P.W.2 identified the respondent to P.W.15. Phenolphthalein test was conducted by P.W.15 in the presence of P.W.3. When P.W.15 asked about the the bribe, which was received from the defacto complainant, the respondent informed that he has given to Periyasamy who is next to him. Money was recovered through recovery mahazar-Ex.P13. Further, he deposed that on 10.02.1997, they made an attempt and since the respondent refused to receive the money, they have not succeeded. Hence, again on 17.02.1997, they arranged for trap proceedings. They prepared entrustment mahazar on 17.02.1997. Recovery



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mahazar was also prepared at the time of occurrence. The evidence of P.W.3, who is the shadow witness, corroborates the evidence of P.W.2. Further, the evidence of P.W.4, who is the wife of P.W.2 also corroborates with the evidence of P.W.2 and she stated in her evidence that the respondent and P.W.6 came to her house and enquired about her husband who is the defacto complainant and directed him to come to office with money. P.W.6 has clearly admitted that he went to the house of P.W.2 once along with the respondent and at the request made by the respondent on the other day, he alone went to the house of the defacto complainant. Evidence of P.W.12-Tahsildar shows that the defacto complainant made an oral complaint and asked him to take action against the respondent, since the respondent has not issued the certificate in right time. Evidence of P.W.5 clearly shows that the defacto complainant used to get money as and when required and in the same way, he has got the money at the relevant point of time. P.W.7 to 9 clearly stated about the application for getting electricity connection to his agricultural field made by the defacto complainant before the Electricity Board and further proceedings. P.W.15 is the trap laying officer whose evidence is corroborated by the evidence of P.Ws.2 and 3.



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17. The main defence taken by the respondent is that the respondent refused to receive the money and give the certificate, as demanded by the defacto complainant. Since the first attempt failed, subsequently with the help of P.W.15, they succeeded. The evidence of P.W.3 corroborates with the evidence of P.W.2. P.W.3 is one of the public servants, who has no animosity with the respondent to give false evidence against him. There is no reason to disbelieve the evidence of P.W.3. P.W.15 is the trap laying officer who may not have personal animosity to foist a false case against the respondent. Hence, the first contention of the learned counsel for the respondent is not accepted. Another contention of the learned counsel for the respondent is that the money was not recovered directly from the respondent and the same was recovered from another man who was not examined by the prosecution. Evidence of P.Ws.2 and 3 clearly shows that the respondent reiterated his demand on 17.02.1997. When P.W.2 gave the money, the respondent received the tainted currency and given the same to one Periyasamy. P.W.15 went to the office and conducted Phenolphthalein test which turned positive. Further, the respondent only stated that he received the money from P.W.2 and he has given the same



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to one Periyasamy. Therefore, non-recovery of bribe money directly from the respondent is not fatal to the case of the prosecution. Further, the respondent has not explained as to how the Phenolphthalein powder came to his fingers and when it was tested, which turned positive.

18. From the evidence of P.W.1-Sanctioning authority, P.W.2-defacto complainant, P.W.3-shadow witness, P.W.4-wife of the defacto complainant, P.W.5 -financial assistant of the defacto complainant, P.W.6-Village Assistant who was working under the respondent, P.W.8-Foreman, P.W.9-J.E, Tamil Nadu Electricity Board, P.W.12-Head Quarters Tahsildar, P.W.13-Revenue Inspector and P.W.15-trap laying officer, the prosecution has proved that the respondent demanded money from the defacto complainant and accepted the same, which is illegal gratification other than legal remuneration. Material objects like Entrustment Mahazar-Ex.P8, and Seizure Mahazar- Ex.P13 and Chemical analysis Report-Ex.P26 have also strengthened the case of the prosecution.



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19. Once the prosecution has 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 settled proposition of law that when once prior demand, acceptance and recovery of money are proved, there is presumption under the provisions of the Prevention of Corruption Act and the accused has to rebut the same in the manner known to law. This Court is the appellate court, which is a final Court of fact finding and re-appreciates the evidence independently.

20. Since it is a case based on the trap proceedings, the Court has to see as to whether prior demand, acceptance of bribe and recovery, are proved by the prosecution beyond all reasonable doubts. In an appeal against acquittal filed by the State, normally, the appellate Court will not interfere, unless, the Court finds perversity in appreciation of evidence by the trial Court and compelling circumstances warranting interference in the judgment of the trial Court.



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21. Considering the facts and circumstances of the case, this Court finds that the prosecution has proved its case beyond all reasonable doubt. As already stated, on a careful perusal of the materials, both oral and documentary evidence, this Court finds that there is no other view possible except that the respondent demanded and accepted the bribe money in the presence of the independent witness and the same was also substantiated by the prosecution witnesses. This Court finds that the appreciation of evidence by the trial court is perverse and there is a compelling circumstance to interfere with the judgment of the trial court.

22. In view of the above, this Criminal Appeal is allowed. The judgment dated 18.11.2013 passed in Special Calendar Case No.55 of 1999 on the file of the Court of the Special Judge/Chief Judicial Magistrate, Salem is hereby set aside. Consequently, connected miscellaneous petition, if any, is closed.



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23. Since it is a reversal judgment and it is necessary to direct the respondent / accused to appear before this Court for asking question of sentence to be imposed against him. Accordingly, the respondent/accused is directed to appear before this Court on 02.03.2023.

28.02.2023

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Index:Yes/No

Internet: Yes/No

To

1. The Special Judge/Chief Judicial Magistrate,
Salem.
2. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

The Criminal Appeal is arising out of the judgment of acquittal. This Court as an Appellate Court after re-appreciating the entire materials and hearing the arguments of both sides, reversed the judgment of acquittal and directed to post today under the caption “for questioning of sentence”.

2. Today, when the matter is taken up for hearing, the appellant/State secured the accused/respondent and produced before this Court through Video Conferencing. On questioning, the respondent/accused has stated that he has not committed any charged offences and a false case has been foisted against him. He further submitted that he is suffering from multiple ailments and he is in bedridden. Hence, he request this Court to acquit him from the charged offences.

3. Mr.R.Ganesh, legal aid counsel appearing for the respondent/accused submitted that the respondent/accused has not committed any charged offences



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and he is aged about 77 years and suffering from multiple ailments. Due to ailments and old age, he is immobalised. Hence, this Court may show some leniency and award lesser punishment to the respondent.

4. Heard the learned counsel on either side.

5. Considering the facts and circumstances and also considering the mitigating circumstances, this Court is inclined to award minimum punishment for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 committed by the respondent, which will meet the ends of justice. He is convicted for both the charges and sentenced as under:

<i>Offence</i>	<i>Sentence</i>
Section 7 of Prevention of Corruption Act, 1988	to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months.
Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months.
	Both the sentences are ordered to run concurrently.
	the period of detention already undergone by the accused is directed to be set off under Section 428 Cr.P.C



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6. The respondent/accused was secured from the hospital and produced before this Court through video conferencing and he is not in a condition to move. Therefore, if he requires any treatment, the prison authority may provide sufficient treatment for the ailments suffered by the respondent/accused and he may be treated in the Prison Hospital at Salem and if the Prison Hospital has no adequate facility to treat the ailments of the accused, he may be referred to the Government Hospital, Salem.

02.03.2023

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Note :

- (i) Registry is directed to issue copy of the judgment by today itself
(i.e, on 02.03.2023).
- (ii) Appellant/Police is directed to secure the custody of the respondent/accused to execute the period of imprisonment.

Copy to: The Superintendent, Central Prison, Salem.



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