IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

Coram

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.A.No. 410 of 2014

C.Ganesan ..Appellant

-Vs-

State
Rep.by Inspector of Police,
Vigilance & Anti Corruption,
Salem
(Crime No.7/AC/2010) ..Respondent

PRAYER : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction and sentence imposed on the appellant in judgment made in Spl.C.C.No. 32 of 2014 on the file of the Special Judge, Special Court for trial of case under Prevention of Corruption Act), Salem dated 17.07.2014.

For Appellant : M/s.M.Govindaraju
For Respondent : G.V.Kasthuri, APP

JUDGMENT

Challenging the conviction and sentence imposed in Spl.C.C.No. 32 of 2014, dated 17.07.2014 by the Special Judge, Special Court for trial of case under Prevention of Corruption Act), Salem, the present appeal has been filed by the appellant/accused.

2. The respondent police registered a case in Crime No. 7/AC/2010. After completing investigation, laid charge sheet before the Special Judge, Special Court of trial of cases under Prevention of Corruption Act, Salem. The case was taken on file in Spl.C.C. No.32 of 2014. After completing formalities, framed charges under Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act. After framing charges, in order to substantiate the charges framed against the appellant, on the side of the prosecution, totally 11 witnesses were examined as PW1 to PW11 and 32 documents were marked as Ex.P1 to Ex.P32, besides 5 material objects were exhibited as MO1 to MO5.

3. After completing examination of prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused/ appellant and questioned under Section 313 of Cr.P.C, wherein she denied as false and pleaded not guilty. On the side of defence no oral or documentary evidence were produced.

4. After completing trial, hearing of arguments on either side and considering material facts, the learned Special Judge found guilt of the accused for the offences under Section 7 and 13(2) punishable under Section 13(1)(d) of Prevention of Corruption Act and sentenced to undergo one year simple imprisonment and to pay fine of Rs.2,500/-, in default to undergo, one month simple imprisonment for the offences under Section 7 of the Prevention of Corruption Act. The appellant was also convicted and sentenced to under to one year simple imprisonment and pay pay fine of Rs.2500/-, in default to undergo further period of one month simple imprisonment for one month for the offence under Section 13(2) punishable under Section 13(1)(d) of Prevention of Corruption Act. Both sentences

were ordered to run concurrently and the period of sentence already undergone by the appellant during investigation was ordered to be set off by invoking 428 Crpc. Aggrieved over the same, the accused has filed the present appeal before this Court.

5. The case of the prosecution is that the appellant was working as Village Administrative Officer at Iveli Village, Sankagiri Taluk and the defacto complainant approached the appellant for measuring the property of his father in law. Since her father in law was aged about 70 years , the defacto complainant assisted him in his agricultural operations. Since his father in law decided to construct a building in his land situated in surey no. 20/A by securing loan from the bank, the defacto complainant approached the appellant on 17.09.2010 for getting FMB sketch, extract of 'A' register, Land ownership certificate and certain revenue documents. The defacto complainant met the appellant in his office and requested him to furnish necessary revenue documents as mentioned above. The defacto complainant also made request to measure the land. At that time, the appellant demanded Rs.6000/- as bribe from the defacto complainant to

carry out his work. On 17.09.2010, the appellant furnished FMB sketch and 'A' register extract to the defacto complainant and thereafter the defacto complainant was instructed by the appellant to receive owner ship certificate at the time of tendering bribe money. The defacto complainant was further directed to remit the amount due for measuring land through challan and submit necessary application at the Tahsildar Office and again meet him with the bribe money. Since the defacto complainant did not want to give bribe amount, he approached the respondent police. Thereafter the respondent police arranged for a trap and conducted trap proceedings after preliminary enquiry. On 08.10.2010, trap proceedings were conducted and the same was succeeded. After completing investigation, the respondent police laid the charge sheet, hence the present case.

6. The learned counsel for the appellant would submit that PW3 and PW7 are not independent witnesses, they were tuted witnesses. The appellant never demanded and accepted the alleged money. There was some motive nurtured by the defacto complainant against the appellant and the demand of money was not proved by the prosecution, therefore the question

of acceptance of money does not arise. The prosecution witnesses are artificial and not natural witnesses. The motive of the defacto complainant to make the complaint against the appellant was proved by preponderance of probabilities and the findings of the trial Court was based on the assumption and presumption. The testimony of the defacto complainant is not trustworthy and reliable as he did not attempt to make complaint before the Tahsildar or any other revenue authorities with regard to the alleged demand of bribe made by the appellant. Even though, the alleged demand was made on three different occasions as per the version of the defacto complainant, the probability of accepting illegal gratification is far remote for the presence of PW3, who is totally a stranger, no prudent person will accept bribe in the presence of a stranger. The testimony of PW4 is that she did not receive any complaint against the complainant who was under control for the past six months prior to the occurrence. Further, there was no evidence on record to prove that the application was submitted by PW2 on behalf of the owner of the property viz., father in law. Moreover, PW2 clearly stated during cross examination that the document of Power of Attorney to submit an application for measuring of land of Mr. Palaniappan who is the father in law of the PW2 is essentially required. PW7 also deposed that such power was not given to the defacto complainant to make such an application to the appellant for measuring of the property belongs to his father in law. It is quite unbelievable that the defacto complainant never whispered PW9/wife of PW2 prior to the occurrence that the appellant demanded illegal gratification, despite the fact that the alleged demand was made by the appellant on three different earlier occasions on 17.09.2010, 07.10.2010 and lastly on 08.10.2010. The prosecution has failed to prove the case beyond all reasonable doubt and the appreciation of evidence by the trial Court is perverse, hence the judgment of the trial Court is liable to be set aside.

7. On the other hand, the learned Additional Public Prosecutor would submit that while the appellant was working as Village Administrative Officer in Iveli Village, Sankagiri Taluk, the defacto complainant approached the appellant for getting certain revenue documents and also for measuring land which belongs to the father in law of the defacto complainant. His father in law was aged 70 years therefore for and on

behalf of his father in law, the complainant approached the appellant. The appellant demanded a sum of Rs.6000/- on 17.09.2010 and subsequently when he expressed his inability to pay Rs.6000/-, the appellant reduced the bribe amount to Rs.5,500/- and he made demand on 07.10.2010. Since the defacto complainant did not want to give bribe to the appellant, he approached the respondent police. PW11/Kala, who was working as Assistnat, Forensic Science Department arranged for a trap. PW3/Health Inspector, stood as shadow witness. After conducting preliminary enquiry, the complaint was accepted by the respondent police and registered a case. On 08.10.2010 also they conducted pre-trap demonstration and thereafter the defacto complainant went along with PW3/shadow witness. On 08.10.2010, the appellant demanded and accepted the bribe in the presence of PW3, immediately the defacto complainant showed pre-arranged signal to PW11 who went to the office of the appellant and also conducted trap proceedings and recovered the money form the appellant in the presence of PW3. The phenolphthalein test and forensic report was also received positive. From the evidence of PW2, PW3 and PW11, the prosecution proved the demand, acceptance of bribe and recovery of tainted money, therefore the trial Court rightly appreciated the evidence and rightly convicted the appellant for the charged offence. There is no merit the appeal and the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent police and perused and documents available on record.

9. It is the specific case of the prosecution that the appellant as a public servant had demanded money from the defacto complainant for issuing certain revenue documents and also for measuring property belongs to the father in law of the defacto complainant. The appellant had also demanded and accepted the bribe money from the defacto complainant and the same was recovered by the respondent police in the presence of other witnesses, therefore the demand, acceptance of bribe and recovery of tainted currency was proved against the appellant.

10. In order to substantiate the charges levelled against the appellant, on the side of the prosecution, totally 11 witnesses were examined as PW1 to PW11 and 32 documents were marked as Ex.P1 to P32 besides 5 material objects were exhibited as MO1 to MO5. Out of 11 witnesses, the defacto complainant was examined as PW2 namely Jayarajan. A careful perusal of the evidence of PW2 shows that he approached the appellant who was working as Village Administrative Officer, Iveli Village, Sangakiri Taluk for some revenue records pertaining to the land belongs to his father in law and also to measure the property, so as to obtain loan from a bank to construct a building in the said lands. The appellant demanded bribe to give a copy of revenue records as sought for by the defacto complainant. Further as directed by the appellant, the defacto complainant has paid the amount through challan in the name of his father in law for measuring the lands. The said challan was also marked as Ex.P2. Therefore, the evidence of PW2 and Ex.P2/Challan clearly shows that the defacto complainant applied for certain documents and also for measuring of land. According to PW2/defacto complainant, the appellant initially demanded Rs.6000/- for

furnishing documents and also for measuring property. Subsequently, he reduced the bribe amount to Rs.5,500/-. Since the defacto complainant did not want to give illegal gratification, he approached the respondent police and lodged a complaint and the same was registered and trap was initiated in the presence of a shadow witness, who was examined as PW3.

11. A careful reading of evidence of PW3 who stood as shadow witness would reveal that on 08.10.2010 the defacto complainant went to the office of the appellant, at that time, the appellant demanded and obtained bribe money. The defacto complainant went outside and showed pre-arranged signal to PW12, and after conducting phenolphthalein test, the said money was recovered from the appellant in the presence of PW3. PW3 who also accompanied PW2/defacto complainant on the said date, observed the conversation and transaction between the defacto complainant and the appellant and PW12 made phenolphthalein test and thereafter he recovered money from the appellant in the presence of PW3. PW3 stood as independent witness, who categorically stated that the defacto complainant preferred a complaint and pre-trap demonstration was conducted.

Subsequently on 08.10.2010 the appellant reiterated the bribe amount from PW2 and accepted the same. Therefore from the evidence of PW2,PW3 and PW12, the prosecution has proved the offence beyond reasonable doubt.

12. A combined reading of evidence of PWs 1,2,3, 11 and 12 clearly prove that the prosecution proved the demand made by the appellant. Evidence of PW2 and PW3 clearly shows the acceptance of bribe made by the appellant. PW2 and PW12 clearly shows recovery of bribe amount from the appellant. Therefore, from the above prosecution witnesses, the prosecution has proved the demand, acceptance and recovery of bribe. Further the revenue documents clearly shows that the land belongs to the father in law of the defacto complainant and as per challan dated 17.10.2010 /Ex.P2 the defacto complainant made application for and on behalf of his father in law for getting certain revenue documents and also for measuring the property.

13. It is not in dispute that the appellant was not working as VAO at the relevant point of time. Evidence of the prosecution clearly proved that the appellant was working as VAO in Ively Village, Sagakiri Taluk during the relevant point of time. Other documents marked as Exs.P6, P7, P8 also clearly shows that the defacto complainant required certain documents. Ex.P2 and the evidence of PW2 clearly shows that only for want of certain documents, he approached the appellant who worked as Village Administrative Officer of the said village. The appellant has not denied the approach of the defacto complainant for want of certain revenue documents and for measuring of property belongs to his father-in-law namely Mr.Palaniappan.

14. The main defence taken by the appellant is that they forcibly kept the money on his pocket. But as per the evidence and records, soon after acceptance, phenolphthalein test was conducted on the fingers of the appellant which resulted positive and the samples were sent to forensic department, which was subsequently proved positive. Therefore, the said

defence taken by the appellant is not acceptable. The prosecution has proved the demand, acceptance and recovery made by the appellant, hence as per Section 20 of the Prevention of Corruption Act, unless the contrary is proved; the recovered tainted currency is gratification or other than the legal remuneration. Whereas in this case the appellant has not rebutted the presumption in the manner know to law, therefore the defence taken by the appellant is not acceptable.

15. On over all consideration of the evidence on records and the submissions put forth by both the learned counsel, this Court without any hesitation, has come to the conclusion that the prosecution has proved its case beyond reasonable doubt. This Court finds no merits in the appeal and the same is liable to be dismissed.

16. In the result, the criminal appeal is dismissed.

31.01.2023

Index:Yes/No
Speaking order/Non-speaking order
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To

1. The Inspector of Police,
   Vigilance & Anti Corruption,
   Salem.

2. The Public Prosecutor,
   High Court, Madras.

P.VELMURUGAN, J

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