



WEB COPY



Crl.A.No.521 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2023

PRONOUNCED ON: 28.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.521 of 2014

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

... Appellant

Vs.

K.Mohamed Ali

... Respondent

Prayer:Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of acquittal of the respondent/accused passed in Special Case No.4 of 2003 dated 09.12.2013 on the file of the Court of Special Judge/Chief Judicial Magistrate/Cuddalore District, Cuddalore and to convict the respondent/accused for the charges framed against him.

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

For Respondent : Mr.C.S.S.Pillai
and
Mr.H.Maruthi Raj



Crl.A.No.521 of 2014

JUDGEMENT

WEB COPY This Criminal Appeal has been filed against the judgment passed in Special Case No.4 of 2003 dated 09.12.2013 on the file of the Court of Special Judge/Chief Judicial Magistrate, Cuddalore.

2. The appellant registered the case against the respondent in Crime No.02 of 2002 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 Special Judge/Chief Judicial Magistrate, Cuddalore. The learned Special Judge after completing the formalities, has taken the charge sheet on file in Special Case No.4 of 2003. After trial, the learned Chief Judicial Magistrate not found the accused guilty for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and acquitted him.

3. Before the trial court in order to substantiate the charges, on the side of the prosecution, totally twelve witnesses were examined as P.W.1 to P.W.12 and 22 documents were marked as Ex.P1 to Ex.P22. Besides five material objects were exhibited as M.O.Nos.1 to 5. On completion of examination of

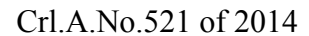


Crl.A.No.521 of 2014

prosecution witnesses, incriminating circumstances culled from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence no oral evidence was let in, however four documents were marked as Ex.D1 to Ex.D4.

4. After completing trial and hearing of arguments advanced on either side, the learned Special Judge not found the accused guilty for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, and thereby acquitted him. Challenging the said judgment of acquittal passed by the learned Special Judge, the State has filed this appeal.

5. The case of the prosecution is that the respondent was working as the Administrative Officer in Tamil Nadu Maritime Board at Cuddalore Port. The respondent had the official function of processing the applications for registering the towing launches with the help of Port Conservator and Assistant Port Conservator and put up the applications for final orders before the Port Officer concerned. The Port Officer will sign the registration certificate and



4/26



Crl.A.No.521 of 2014

6. The learned Additional Public Prosecutor appearing for the appellant/State submitted that the respondent was an Administrative Officer, who had the official function of processing the application of towing launches. The Port Officer will sign the registration certificate and return back to the Administrative Officer who will issue the same to the concerned person. At the relevant point of time, defacto complainant registered the application on behalf of P.W.4. The respondent who was the Administrative Officer demanded and accepted Rs.500/- as illegal gratification other than legal remuneration and also additional amount of Rs.100/- for registration fess. On 22.01.2002, when the defacto complainant approached the respondent/accused at his office and requested him to issue the license for the said launch, but the respondent directed him to pay the registration fee. Though the defacto complainant reminded that the registration fee was paid by him already, the respondent stated that he used the amount for himself and hence he asked to pay the registration fees once again. Further, the respondent again demanded Rs.500/- as illegal gratification other than legal remuneration. Since the complainant did not want to give money, he approached the appellant. Pre-trap demonstration was conducted. On 24.01.2002, the defacto complainant along



Crl.A.No.521 of 2014

with trap laying team went to the office of the respondent. The respondent reiterated his earlier demand and obtained Rs.500/- as illegal gratification other than legal remuneration from the defacto-complainant for discharging his official duty, in the presence of P.W.3, who is the shadow witness. Subsequently the respondent caught red handed with the bribe amount. Money was recovered and Phenolphthalein test was conducted, which showed positive and hence the respondent/accused was arrested in this case.

7. Further she submitted that the evidence of P.W.2 corroborated with the averments made in the complaint and the entrustment mahazar and the evidence of P.W.3. The official witness namely P.W.3 who accompanied with the defacto complainant-P.W.2 has clearly stated that the respondent once again reiterated his earlier demand on the date of trap proceeding ie., on 24.01.2002. The earlier demand made by the respondent was proved by the evidence of P.W.2-defacto complainant. P.W.2 has clearly stated about the earlier demand and also acceptance of bribe by the respondent. The trial court ignored the evidence of P.W.2 and P.W.3. Since some portion of evidence of P.W.2 alone was not supported the case of the prosecution, the trial court came



Crl.A.No.521 of 2014

to the conclusion that the defacto complainant has not supported the case of the prosecution. Defacto complainant has admitted the registration of the application before the Administrative Officer of Port and the respondent is the one who dealt with the application. Seizure Mahazar, Entrustment Mahazar, Phenolphthalein test were clearly proved by the evidence of P.W.3, who is the independent witness who is also public servant. There is no reason to disbelieve the evidence of P.W.3. P.W.3 is one of the public servant, who has no animosity with the respondent to give false evidence against him.

8. She further submitted that prosecution has proved its case beyond all reasonable doubts through oral and documentary evidence, but, unfortunately the trial Court ignored the material evidence available on record and failed to appreciate the evidence of the prosecution witnesses in the right perspective and erroneously came to the conclusion that prosecution has not proved its case and extended the benefits of doubt towards the accused. Hence the finding of the trial Court is perverse and the judgment of acquittal passed by the trial Court warrants serious interference of this Court.



Crl.A.No.521 of 2014

9. Learned counsel for the respondent submitted that the prosecution has not proved its case beyond reasonable doubt. P.W.2-defacto complainant has not supported the case of the prosecution. Prosecution itself declared the defacto complainant as hostile witness and the evidence of defacto complainant is untrustworthy. The trial court considering the fact that the appellant has not proved the case beyond reasonable doubt against the respondent and acquitted him. Sine-quanon, in case based on the trap proceedings, earlier demand, subsequent demand of bribe, acceptance of the bribe and recovery of money have to be proved. Absence of any of the said main ingredients leads to acquittal of the accused. The prosecution failed to establish the foundational fact that the respondent officer was called upon to explain how the amount in question was found in his possession. Further, the appellant has not established the recovery of money in the manner known to law. The defacto complainant himself denied the demand, acceptance and recovery on the date of occurrence. The trial court rightly appreciated the evidence and acquitted him.

10. Further it is a well settled proposition of law that in appeal against the order of acquittal, the accused is getting double presumption.



Crl.A.No.521 of 2014

Fundamentally the accused is presumed to be innocent and when the Court below confirmed his innocence and acquitted him, then it is for the prosecution has to rebut the presumption of innocence. Further, the prosecution has to establish that the appreciation of the evidence by the trial court is perverse. In this case, the appellant has not established any of those grounds.

11. Further, while interfering with the judgment of acquittal, the appellate Court must satisfy that there is compelled circumstances warranting such 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. Hence, there is no merit in the appeal and the same is liable to be dismissed.

12. Heard the learned Additional Public Prosecutor appearing for the appellant/State and the learned counsel appearing for the respondent and perused the materials available on record and also carefully perused the judgment of the trial Court.



Crl.A.No.521 of 2014

WEB COPY

13. The trial court framed two charges as against the respondent for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act. On the side of the prosecution, totally 12 witnesses were examined as P.Ws.1 to 12 and 22 documents were marked as Exs.P1 to P22. Besides, five material objects were also exhibited as M.O.No.1 to M.O.No.5. P.W.2, who is the defacto-complainant has clearly stated that he was the proprietor of Jayabharathi Contractors and also he was an agent of Boxi and Company Chennai, who was an authorized agent for loading and unloading of goods at the time of arrival of ships in the port with the help of registered towing launches. P.W.4 was the owner of Muthumariamman launch who approached the defacto-complainant on 02.11.2001 and requested him to arrange for registration of launch and gave the application to P.W.2/defacto complainant. The defacto complainant in turn submitted the application before the respondent. The respondent after receiving the application, had demanded and accepted Rs.500/- as illegal gratification other than legal remuneration and also he received sum of Rs.100/- as registration fees, for which he did not issue any receipt. The respondent orally permitted the defacto complainant to use



Crl.A.No.521 of 2014

the said launch as a towing launch. Since the application was given seeking license, on 22.01.2002, the defacto complainant approached the respondent at his office and requested him to issue license for the launch belonging to P.W.4. The respondent directed P.W.2 to pay the registration fees of Rs.100/- again. Though the defacto complainant reminded that the registration fee was paid by him already, the respondent stated that he used the amount for himself and hence he asked to pay the registration fees once again. Further, the respondent demanded Rs.500/- as illegal gratification other than legal remuneration. Since the complainant did not want to give money, he approached the appellant. Pre-trap demonstration was conducted. On 24.01.2002, the defacto complainant along with trap laying team went to the office of the respondent. The respondent reiterated his earlier demand and obtained Rs.500/- as illegal gratification other than legal remuneration from the defacto-complainant for discharging his official duty, in the presence of P.W.3. Subsequently the respondent was caught red handed with the bribe amount. Phenolphthalein test was conducted, which showed positive and tainted money was recovered after comparing with entrustment mahazar Ex.P5.



Crl.A.No.521 of 2014

14. After declaring as hostile witness, P.W.2 during cross examination, accepted the suggestion put by the prosecution that on 24.01.2002 at 10.30 am, at the office of the appellant, he has signed in the entrustment mahazar along with P.W.3 and other witnesses. He also admitted another suggestion put by the prosecution that when they approached the respondent at 3'o clock, the respondent reiterated the amount, therefore he has given the said amount of Rs.500/- to the respondent and he accepted the same. Since these two facts have not been stated in the chief examination, he was declared as hostile. The date of occurrence is 24.01.2002, whereas, the witness was examined before the Court on 21.06.2006. It is highly impossible to remember all the facts in a stereotype manner. However, the said contradiction is not a major contradiction. After declaring as hostile witness, when the prosecution has put a suggestion, the P.W.2 has admitted the preparation of entrustment mahazar and also his signature in the entrustment mahazar during pre-trap demonstration. He has also admitted that at the time of meeting the respondent at 3'o clock at the office of the respondent, the respondent demanded money and thereafter he handed over the money. He also received the same and after counting the tainted money kept in his life side of back side pant pocket.



Crl.A.No.521 of 2014

Therefore, demand and acceptance of money were proved by the evidence of

P.W.2.

15. P.W.3 is the independent witness as well as the shadow witness, has clearly deposed about the entire incident regarding the issuance of summon by the appellant and also stated about the preparation of entrustment mahazar and pre-trap demonstration. He has also stated that on 24.01.2002 at 3'o clock, he accompanied with P.W.2, went to the office of the respondent. He further stated that when P.W.2 approached the respondent, he asked as to whether he has brought money as already demanded by him, for which the defacto-complainant/P.W.2 has stated that 'yes' and he took the money which was subjected to the pre-trap demonstration/ mentioned in the entrustment mahazar was handed over by the defacto complainant/P.W.2 to the respondent/accused. The respondent received and counted the same and kept it in his left side of back side pant pocket. Thereafter, the defacto complainant came out of the office and showed the pre-arranged signal to the trap laying team and the team proceeded to the office of the respondent. Subsequently the respondent was caught red handed with the bribe amount. In the presence of P.W.3, phenolphthalein test was conducted and it showed positive. Thereafter, the



Crl.A.No.521 of 2014

bribe money was recovered from respondent by the trap laying officer through seizure mahazar and the same was marked as Ex.P12. Evidence of trap laying officer P.W.10 was corroborated with the evidence of P.W.2/defacto complainant and P.W.3/shadow witness. Therefore, prior demand on 02.11.2001, further demand on 22.01.2002 and acceptance of bribe amount on 24.01.2002, recovery of the bribe amount from the respondent were proved from the evidence of P.W.2, P.W.3 and P.W.10-trap laying officer. P.W.4-one Nedunchezian has clearly stated that P.W.2 presented the application Ex.P2 for registration of the launch on behalf of him at the port office. P.W.5 who was working as Superintendent of Tamil Nadu Maritime Board Board and he was working as Conservator of Port in the Cuddalore Port Office. P.W.6 was working as Assistant Conservator of Cuddalore Port Office. P.W.7 was working as Junior Assistant in the same office. As an Administrative Officer, the respondent had the official function of processing the application for registration of towing launches with the help of Port Conservator and Assistant Conservator and forward the same to the Port Officer. The Port Officer will sign the registration certificate and return back to the Administrative Officer, who will issue the same to the concerned person. From the evidence of P.W.7,



Crl.A.No.521 of 2014

it is very clear that the issuance of certificate has to be done only by the respondent. Evidence of P.W.2 clearly shows that he approached the respondent for getting registration certificate. Evidence of P.W.8 clearly shows that at the relevant point of time, the post of Port Officer at Cuddalore was vacant and hence P.W.8 was holding the additional charge of the post of Port Officer at Cuddalore. The nexus between the defacto complainant and the respondent are proved from the evidence of abovesaid witnesses.

16. P.W.7 who was working as Junior Assistant who received the application Ex.P2 from the respondent/accused and registered the application in the Distribution Register Ex.P8 in Serial No.3216 at page No.33. The said entry is marked as Ex.P18 and further he has stated that he handed over the application to P.W.6/Assistant Conservator and he in turn acknowledged the same. P.W.6 Assistant Conservator entered the application in the launch register and the serial number is 9141. The said entry was marked as Ex.P15. Further he directed the applicant to produce the launch for inspection and he made endorsement about the registration of the application in the Launch Register in a paper and attached it with the application. The endorsement is



Crl.A.No.521 of 2014

marked as Ex.P16. He handed over the application along with endorsement made in the paper to P.W.5/Port Conservator. P.W.5 sent the application to the respondent/accused on 27.11.2001. On that day itself, the respondent instructed P.W.5 to inspect the launch. On 11.12.2001, P.W.5 and P.W.6 inspected the launch and submitted the inspection report to the respondent. The respondent in turn forwarded the application to the Port Officer. P.W.8 who was the incharge of the Port Officer, Cuddalore Port on 20.02.2002 sanctioned and granted license to P.W.4 who was the applicant therein. The P.W.4 was instructed to pay the license fee on 18.01.2002. The defacto-complainant approached the accused in his office and requested him to issue the license. The respondent directed him to pay the registration fee once again and in addition to that he had demanded Rs.500/- as bribe for issuing the incense. P.W.2 reminded about the registration fees which was paid by him already. The respondent has stated that he spent the amount for himself and he asked P.W.2 to pay once again the license fee of Rs.100/- plus bribe amount of Rs.500/- Since the defacto complainant was not willing to pay the same to the accused, he approached P.W.10, the Inspector of Police, Vigilance and Anti Corruption, Cuddalore, and made written complaint against the



Crl.A.No.521 of 2014

respondent/accused. Evidence of P.W.4-applicant and officials of Cuddalore Port Office P.W.5 to P.W.8 clearly shows that the respondent is the competent person to issue license after completing the process as stated above. From the evidence of P.W.2-defacto complainant, P.W.3-shadow witness, P.W.10-trap laying officer and in addition to that chemical analysis report Ex.P20, the prosecution has proved that the respondent demanded and accepted the bribe money. *Sine-quantum*, in this case, earlier demand, subsequent demand of bribe, acceptance of the bribe and recovery of tainted currency were proved with the cogent, consistent and reliable evidence. Though P.W.2 was declared as hostile, evidence of P.W.2 is cogent and consistent as stated above, there is no reason to discard the entire evidence of P.W.2/defacto complainant. Though, there are some discrepancies, that may not be the sole ground to disbelieve the entire evidence of defacto complainant/P.W.2.

17. It is a well settled proposition of law that though the complainant turned as hostile witness, entire evidence need not be ignored. If the evidence of the complainant corroborated with other witnesses, which can be taken into consideration. In this case, evidence of defacto complainant substantiated with



Crl.A.No.521 of 2014

the averments made in the complaint and corroborated with the evidence of P.W.3-shadow witness and P.W.10 trap laying officer. The trial court taking advantage of some immaterial discrepancies and contradictions of the evidence of the complainant, acquitted the respondent.

18. Learned counsel for the appellant in support of her contentions placed relied upon the judgment of the Hon'ble Supreme Court rendered in *Neera Dutta Vs. State (Government of N.C.T of Delhi)* reported in 2022 SCC Online SC 1724. The judgment referred by the learned counsel for the appellant is squarely applicable to the present case on hand. The relevant portion of the above referred judgment is extracted here under:

73. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to



Crl.A.No.521 of 2014

WEB COPY

consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.

19. Since this Court, being an appellate Court, as a final Court of fact finding, it has to independently re-appreciate the entire evidence and give independent finding. Accordingly, this Court also thoroughly gone into the entire materials and re-appreciated the entire evidence on record.

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. It is settled proposition of law that in



Crl.A.No.521 of 2014

an appeal against acquittal, normally the appellate Court will not interfere, unless, the Court finds perversity in appreciation of evidence by the trial Court and compelled circumstances warranting interference with the judgment of the trial Court.

21. Considering the facts and circumstances of the case, as discussed above this Court finds that the prosecution has proved its case beyond all reasonable doubt. Though the defacto complainant was declared as hostile witness by the prosecution, that may not be the sole ground to reject the entire evidence. This Court finds that the money demanded by the respondent is nothing but illegal gratification which is other than legal remuneration and also this Court finds that 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 passed in Special Case No.4 of 2003 dated 09.12.2013 on the file of the Court of Special Judge/Chief Judicial Magistrate, Cuddalore is hereby set aside. Consequently, connected miscellaneous petition, if any, is closed.



Crl.A.No.521 of 2014

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

mfa

Index:yes/No

Internet:yes/No

To

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



WEB COPY



Crl.A.No.521 of 2014

P.VELMURUGAN, J.

mfa

Crl.A.No.521 of 2014

28.02.2023



Crl.A.No.521 of 2014

Crl.A.No.521 of 2014

WEB COPY

P.VELMURUGAN, J.

Today, in compliance of the order of this Court dated 28.02.2023, the respondent/accused appeared before this Court and he has been questioned regarding the sentence to be imposed on him. The respondent stated that a false case has been foisted against him and he has not committed any offence as alleged by the prosecution. Further he stated that he is aged about 74 years and he is suffering from many ailments and prays this Court to award minimum sentence.

2. Learned counsel for the respondent would submit that though the trial court extended the benefit of doubt in favour of the respondent, this Court finds that the respondent committed the offence. He requested to consider the age and ailments of the respondent and consumption of time of litigation, leniency may be extended in awarding the sentence.

3. This Court heard the learned counsel for the respondent and also



Crl.A.No.521 of 2014

heard the respondent/accused regarding sentence and perused the materials available on record.

4. As already discussed, this Court has given reasons for reversing the judgment of the trial court. As per Section 7 of Prevention of Corruption Act (Old Act) minimum sentence is six months imprisonment and for the offence under Section 13(2) r/w 13(1)(d) the minimum sentence is one year.

5. However, considering the age of the respondent and also the period of consumption of litigation time, this Court finds mitigating circumstances to award lesser punishment.

6. Accordingly, the respondent is convicted and sentenced to undergo six months rigorous imprisonment and to pay fine of Rs.10,000/- (Rupees Ten Thousand Only), in default, to undergo further period of three months rigorous imprisonment for the offence under



Crl.A.No.521 of 2014

Section 7 of Prevention of Corruption Act. Further he is convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.10,000/- (Rupees Ten thousand only) in default to undergo further period of six months rigorous imprisonment for the offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The sentences are hereby ordered to run consecutively. The period of remand will be set off under Section 428 Cr.P.C.

7. Learned counsel for the respondent seeks suspension of sentence. Considering the serious nature of offence, this Court is not inclined to suspend the sentence.

02.03.2023

mfa



WEB COPY



Crl.A.No.521 of 2014

P.VELMURUGAN, J.

mfa

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 to execute the period of imprisonment.

Copy To

The Superintendent
Central Prison,
Puzhal, No.I Chennai.

Crl.A.No.521 of 2014

02.03.2023