IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2023

PRONOUNCED ON: 28.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.646 of 2014

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

Vs.

K.Chinnusamy ... Respondent

Prayer: Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of acquittal of the respondent/accused passed in C.C.No.90 of 2011 (Old No.06/2007) dated 23.04.2014 on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai and to convict the respondent/accused for the offences framed against him.

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

For Respondent : Mr.K.V.Muthuvisakan
Legal Aid Counsel

JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 23.04.2014 passed in C.C.No.90 of 2011 (Old No.06/2007) on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai.

2. The appellant registered the case against the respondent in Crime No.7/AC/03/CC-II 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 Principal Judge, Chennai. The learned Principal Judge after completing the formalities, has taken the charge sheet on file in C.C.No.6 of 2007 and made over the same to I Additional Sessions Judge, Chennai and subsequently the case was re-numbered as C.C.No.90 of 2011 and transferred to the Special Judge, Special Court for the Cases under Prevention of Corruption Act, Chennai.

3. Before the trial court in order to substantiate the charges, on the side of the prosecution, totally nine witnesses were examined as P.W.1 to P.W.9 and 19 documents were marked as Ex.P1 to Ex.P19. Besides four material objects were exhibited as M.O.Nos.1 to 4. On completion of examination of

prosecution witnesses, when 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 one document was marked as Ex.D1.

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 appeal. Hence the present case.

5. Case of the prosecution is that the respondent/accused was formerly working as Deputy Chief Inspector of Boilers at Chennai. The defacto-complainant was the Manager in M/s.Rasi Electrodes Limited, Chennai which is engaged in the manufacturing of welding electrodes and having factory at Upparapalayam village, Redhills. One K.Krishnaraj was working as qualified

welder who has having valid license till 08.06.2003. By letter dated 22.05.2003, along with treasury challan amounts of Rs.200/-, the defacto complainant had made requisition before the Chief Inspector of Boilers to renew the welders certificate of Krishnaraj. The respondent/accused had carried out the inspection for welders certification on 11.06.2003. The Radio graphical inspection report was forwarded to the respondent/accused and requested the respondent/accused to fix a date for conducting mechanical test at the factory on 10.07.2003. The complainant had arranged taxi for the respondent/accused to visit the company. The respondent/accused visited the company and conducted mechanical test on 11.07.2003. While both of them were returning in the vehicle, the respondent/accused demanded sum of Rs.2,000/- as bribe for issuance of certificate. He was not willing to pay the bribe and hence he lodged a complaint before the appellant. The appellant registered the case and after preliminary enquiry, trap was organized. The respondent/accused received the bribe money in the presence of official witness from the complainant. Hence the case.

6. Learned Additional Public Prosecutor appearing for the

appellant/State would submit that prior demand of bribe, acceptance and recovery of money were clearly proved by cogent and consistence evidence of P.W.2. Evidence of P.W.2/who is the defacto complainant has clearly shows that there was a demand of bribe on the side of the respondent. From the evidence of P.W.2, P.W.3-shadow witness, it was proved that on the date of occurrence, the respondent reiterated the demand which was made earlier and accepted the demanded amount of Rs.2,000/-. The respondent/accused was caught red handed after his demand and acceptance of bribe amount from the complainant. The phenolphthalein test was conducted which showed positive. The tainted currencies were seized from the respondent through a seizure mahazar. P.W.8-the trap laying officer has clearly deposed regarding the receipt of complaint, registration of F.I.R, demonstration of trap proceedings and recovery of tainted money. From the evidence of P.Ws.2, 3 and 8, it is very clear that the respondent/accused was working as public servant, demanded and accepted the illegal gratification other than legal remuneration. The respondent has also not denied that he is the officer who deal with the issuance of certificate. The nexus between the respondent and the defacto complainant was proved. Prosecution has proved its case beyond all reasonable doubts through oral and documentary evidence, but, unfortunately the trial Court 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 respondent/accused and 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.

7. Learned counsel for the respondent/accused submitted that the accused did not receive any money and false case has been foisted against him. Since the respondent is a public servant, the director of Vigilance and Anti Corruption has to obtain sanction from the appointing authority of the respondent to prosecute him and also once the sanctioning authority stated that sanction for prosecution was not necessary, the subsequent officer does not have the power to exercise on the same material to accord sanction. In this case, no fresh materials have been collected by the Investigating agency subsequent to the earlier order. Hence the sanction of prosecution itself is defective. As per the guidelines rendered under Rule 47 of the DVAC Manual,

it is incumbent upon the trap laying officer to record the statement from the accused at the time of arrest. No opportunity was given to the respondent to offer his explanation, which is arbitrary and denial of natural justice. Non recording of the statement of the accused immediately after trap by the trap laying officer is fatal to the case of the prosecution. There are material contradictions between the evidence of prosecution witnesses. Prior demand, acceptance and recovery of money were not proved by the prosecution in the manner known to law. Mere recovery of money itself is not the sole ground to convict the accused, unless it is proved that there was a prior demand, subsequent demand and acceptance of money. The learned trial Judge has rightly and carefully analysed the evidence of prosecution witnesses and heard the arguments of both sides, found that the prosecution has not proved its case beyond reasonable doubt and acquitted the respondent/ accused from the offences charged against him. There is no merit in the Criminal Appeal and the same is liable to be dismissed.

8. Heard the learned Additional Public Prosecutor appearing for the

appellant and the learned counsel appearing for the respondent and perused the materials available on record.

9. Admittedly the respondent/accused was formerly working as Deputy Chief Inspector of Boilers, who is a public servant as defined under Section 2(c) of the Prevention of Corruption Act. The defacto-complainant was the Manager of M/s.Rasi Electrodes Limited engaged in the manufacturing of welding electrodes and having a Factory at Upparapalayam, Alamadhi Post, Red Hills, Chennai. One Krishnarajan was a qualified welder and was having a certificate which has to be renewed once in two years. In the year 2003, for further renewal, the defacto complainant sent a letter dated 22.05.2003 to the Chief Inspector of Boiler along with challan remittance of Rs.200/- and original certificate of Krishnarajan. The Chief Inspector of Boiler has sent a reply dated 29.05.2003, intimated the defacto complainant to contact the Deputy Chief Inspector of Boiler for conducting the test for welder re-qualification certificate. The defacto complainant contacted the respondent who was the then Deputy Inspector and arranged for inspection and accordingly the respondent also conducted inspection. Further, the defacto

complainant has requested him to intimate the date of visit to conduct mechanical test. On 11.07.2003, the respondent inspected the factory and while returning, the respondent demanded a sum of Rs.2,000/- as bribe for issuance of certificate. Since the defacto complainant was not willing to give bribe, he lodged a complaint and thereafter trap was organized. On 18.07.2003, after conducting pre-trap demonstration, when the defacto complainant went along with P.W.3 to the office of the respondent, the respondent/accused reiterated his earlier demand made by him and accepted the demanded amount of Rs.2,000/- from the defacto complainant. After receiving the signal from the defacto-complainant, trap playing team went to the office of the respondent and caught hold the respondent. Phenolphthalein test was conducted and it proved positive. The tainted currencies were seized from the respondent through seizure mahazar. P.W.2, who is a defacto complainant has clearly deposed about the official position of the respondent and purpose for which he approached him and demand of bribe.

10. Though the learned counsel for the respondent vehemently

contended that the sanction of prosecution accorded by P.W.1 is illegal, on perusal of the materials, this Court does not find any violation with regard to sanction of prosecution. Based on the materials available before the sanctioning authority, if the sanctioning authority, satisfied with the materials, they can accord sanction. P.W.1 has clearly deposed that he has accorded sanction based on the materials produced by the prosecution. This Court does not find any defect in Ex.P1-sanctioning order passed by P.W.1 for prosection. The main contention of the learned counsel for the respondent that Rule 47 of the DVAC Manual was not adhered by the appellant soon after the completion of trap proceeding. Rule 47 of the DVAC Manual is not mandatory but it is only a directory. Further evidence of P.W.8-trap laying officer clearly shows that the respondent offered his explanation orally and the same has not reduced into writing. Therefore, mere violation of any one of the Rules of the DVAC Manual may not be the sole ground to acquit the accused, when especially demand, acceptance and recovery are proved by the prosecution. From the evidence of P.W.1-sanctioning authority, P.W.2-defacto complainant, P.W.3-shadow witness, P.W.6-Scientific Officer, P.W.8-trap laying officer, Ex.P7-Entrustment Mahazar, Ex.P9-Seizure Mahazar, Ex.P15-Forensic Lab Report and materials objects M.O.1 to M.O.4, it is clear that the respondent demanded and accepted the money and the prosecution has proved the prior demand, subsequent demand on the date of occurrence, acceptance and recovery of bribe in the manner known to law. The respondent/accused, who is a public servant and he is not entitled to get gratification other legal remuneration . Demand, acceptance and recovery of money were proved by the prosecution in the manner known to law by producing oral and documentary evidence.

11. 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.

12. 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 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.

13. Once the prosecution proved the foundational fact that the respondent who is a public servant, demanded and accepted the illegal gratification which is other than legal remuneration, Section 20 of the Prevention of Anti Corruption Act would come into play. It is for the accused has to rebut the same 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 the Prevention of Corruption Act. The contradictions pointed out by the learned counsel are not material contradictions and the same would not affect the case of the prosecution. Therefore, mere technicalities should not be allowed to stand in the way of administration of justice. This Court finds that the trial court has not properly appreciated the evidence of the prosecution and giving the benefit of doubt to the accused and also this Court finds that appreciation of evidence by the trial court is perverse and finding a compelling circumstances to interfere with the judgment of the trial court.

14. Accordingly, this Criminal Appeal is allowed. The judgment of

acquittal dated 23.04.2014 passed in C.C.No.90 of 2011 (Old No.06/2007) on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai, is hereby set aside. Consequently, connected miscellaneous petition, if any, is closed.

15. 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,
   Special Court for the cases under Prevention of Corruption Act
   Chennai.

2. The Public Prosecutor,
   High Court, Madras.

P.VELMURUGAN, J.

mfa

Crl.A.No.646 of 2014

28.02.2023

Crl.A.No.646 of 2014

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 has neither received any bribe money nor handled the same. Further, he stated that he is taking care of his 87 year old mother and he has made arrangement for his son's marriage and prays this Court to award minimum sentence.

2. Mr.John Sathyan, learned Senior Advocate appearing on behalf of Mr.Swami Subramanian, learned counsel for the respondent submitted that earlier counsel for the respondent on record died. Hence, no communication was sent to the respondent. He further submitted that the respondent is suffering from various ailments due to old age and he has

also made marriage arrangement for his son. The respondent is eligible for 'A' class Prison as per Rules 25 and 26 Tamil Nadu Prison Rules and the same may be considered. He requested to consider the age and ailments of the respondent and consumption of time of litigation and leniency may be extended in awarding the sentence.

3. This Court heard the learned counsel for the respondent and also heard the respondent/accused regarding the 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. However, considering the age and ailments of the respondent, this Court finds mitigating circumstances to award lesser punishment.

5. 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 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 three 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.

6. With regard to the request of the accused to avail 'A' class Prison, the respondent/accused is directed to submit an application before the Prison authority concerned. If he filed an application, the Prison authority is directed to consider his representation and pass orders as per Tamil Nadu Prison Rules.

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 to execute the period of imprisonment.

Copy To

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

P.VELMURUGAN, J.

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Crl.A.No.646 of 2014

02.03.2023