IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2023	Pronounced on : 27.09.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.490 and 532 of 2020

Crl.A.No.490 of 2020

K.Anbalagan,
S/o.Kaliyaperumal,
Junior Engineer,
TANGEDCO Ltd., (O & M),
Adambar @ Vishnupuram,
Tiruvarur District. ... Appellant/Accused No.1

/versus/

State,
Represented by Inspector of Police,
V & AC, Nagapattinam,
Crime No.1 of 2012 ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to set aside the conviction and sentence passed against the appellant in the judgment dated 10.11.2020 made in Spl.C.C.No.30 of 2013 on the file of the Chief Judicial Magistrate at Thiruvarur for the case under Prevention of Corruption Act.

For Appellant : Mr.K.Sukumaran

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

Crl.A.No.532 of 2020

U.Ayyapillai,
S/o.Uthandi
Commercial Inspector,
O/o.The Junior Engineer,
TNEB (O & M),
Adambar @ Vishnupuram,
Tiruvarur District. ... Appellant/Accused No.2

/versus/

State,
Represented by Inspector of Police,
Vigilance & Anti Corruption, Nagapattinam,
Crime No.1 of 2012 ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to set aside the conviction and sentence passed against the appellant herein in the judgment dated 10.11.2020 made in Spl.C.C.No.30 of 2013 on the file of the Chief Judicial Magistrate at Thiruvarur and acquit the appellant by allowing this Criminal Appeal.

For Appellant : Mr.B.Ramamoorthy

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

COMMON JUDGMENT

K.Anbalagan [A1], Junior Engineer, TANGEDCO Ltd., (O & M), and U.Ayyapillai, Commercial Inspector in the Electricity Board, both while working at Adambar @ Vishnupuram, Tiruvarur District were prosecuted by the Vigilance and Anti Corruption police for the offence under Sections 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act.

2. The trial Court found A1 guilty of receiving Rs.1,500/- as bribe and A2 guilty of receiving Rs.500/- as bribe for providing service connection to the newly constructed building of one Senthil Kumar. They were sentenced to undergo punishment as below:

Accused	***Offence under Section***	***Conviction and Sentence imposed by the trial Court***
A1 & A2	7 of P.C.Act	To undergo three years R.I and to pay fine of Rs.1,000/- in default to undergo S.I for three months
	13(2) r/w.13(1)(d) of P.C.Act	To undergo three years R.I and to pay fine of Rs.1,000/- in default to undergo three months S.I

The sentence is ordered to run concurrently. The period of imprisonment between 05.01.2012 to 02.02.2012 ordered to be set off under Section 428 of Cr.P.C.

3. The above said judgment passed in Spl.C.C.No.30 of 2013 on the file of the Chief Judicial Magistrate, Tiruvarur dated 10.11.2020 is challenged in the above Criminal Appeals.

4. The case of the prosecution is that Senthilkumar, after putting up the first floor construction at No.18, Pudukudi village, Kudavasal Taluk, applied for new EB service connection during the month of December 2011 in the office of Junior Engineer, TANGEDCO Ltd., (O&M), Adambar @ Vishnupuram, Tiruvarur District. Anbalagan [A1] was the Junior Engineer at that time inspected the premises on 26.12.2011 at about 4.30 p.m. He advised to shift the service wire running close to the building and for which, demanded Rs.2,000/-. Senthilkumar offered Rs.500/- which Anbalagan [A1] refused and insisted to pay Rs.2,000/- to take action on his request for shifting. Thereafter, on 03.01.2012 at 10.00 a.m., Senthilkumar went to Adambar EB office and met A1, again there was a demand of Rs.2,000/-, but Senthilkumar told Anbalagan [A1] that he had brought money only for shifting fees and came out from Junior Engineer room, at that time, Ayyapillai [A2] met him and demanded Rs.500/- for two connections. Senthilkumar paid Rs.700/- in the counter and got two receipts for Rs.285/- each. Again, when he went to EB office on 04.01.2012 at 10.00 a.m., for the third time there was demand of illegal gratification from Anbalagan. After Senthilkumar agreed to pay the money, Anbalagan initialled the application and directed Senthilkumar to pay Rs.1,650/- in the counter for service connection to the shop and instructed to come on the next day and pay

Rs.1,500/-. The 2nd accused Ayyapillai saw him and for the second time he demanded Rs.500/-. Senthilkumar after remitting Rs.1,650/- in the counter went to the Vigilance office at Nagapattinam and gave a written complaint [Ex.P2] to the Inspector of Police, Vigilance and Anti Corruption, Nagapattinam. The written complaint received on 04.01.2012 at 17.00 hours by Thiru Chitravel [PW.15], the Inspector of police, Vigilance and Anti Corruption. Thereafter, PW.15 arranged for two official witnesses Ramamurthy [PW.3] and Velusamy [not examined] and demonstrated Sodium Carbonate with phenolphthalein test in their presence. Then, the trap money of Rs.2,000/- smeared with phenolphthalein and entrusted with Senthilkumar with instructions to give the money if demanded by the Junior Engineer and Commercial Inspector. The Entrustment Mahazar [Ex.P4] was drawn at 6.30 a.m., on 05.01.2012. The numbers found in 3x500 currencies and 5x100 currencies were noted in the Entrustment Mahazar [Ex.P4]. The proceedings completed at about 7.30 hours. The defacto complainant, two official witnesses and Trap Laying Officer signed in the Entrustment Mahazar. Thereafter, the trap team left the office of the Vigilance and Anti Corruption, Nagapattinam to Adambar TANGEDCO Ltd., (O&M) office.

5. Senthilkumar [PW.2] and Ramamoorthy [PW.3] met A1 at his room at about 9.30 a.m. When PW.2 enquired about his application for new three phase service connection to the first floor of his building, A1 called A2 and told him to bring the application form. When A2 brought the application form, A1 made initial in the form and again demanded money. PW.2 took out Rs.1,500/- from his right side pant pocket and gave it to A1. A1 received it and kept it in his front left side shirt pocket, after counting the money. Then A1 gave the application form to PW.2 and instructed to meet A2 and then remit the fees in the counter. A2, who was seated in the room opposite to Junior Engineer room, received the application form and after making entry in the register told PW.2 to deposit Rs.6,850/- in the counter. Thereafter, A2 came down the stairs carrying the register and demanded money from PW.2. On his demand PW.2 took out 5x100 notes smeared with phenolphthalein kept in his pant pocket, A2 received the money and kept it in his right side pant pocket. Then PW.2 went to the counter in the ground floor and paid Rs.6,850/- in the counter. At that time there was no power supply. Therefore, the staff in the counter was not able to generate the bill and requested PW.2 to wait and collect the bill after he could generate the bill on restoration of power supply. Thereafter, PW.2 came out from the EB office and gave the pre arranged signal of wiping his face with kerchief. On receiving the said signal, the trap team entered the office of Junior Engineer, TANGEDCO.

6. In the presence of the witnesses, phenolphthalein test was conducted in the hands of A1 and A2. Since the colour of Sodium Carbonate solution turned pink, confirming the presence of phenolphthalein in the hands of the accused persons, TLO asked them to produce the money received from PW.2. A1 took out Rs.1,500/- from his front left side pocket of the shirt. The numbers found in the 3x500 notes tallied with the numbers noted in the Entrustment Mahazar. Thereafter, A1 was asked to remove his shirt after giving an alternate shirt. The shirt pocket portion was subjected to phenolphthalein test and seized. After confirming the presence of phenolphthalein in his hands A2 was asked to handover the money received from PW.2. A2 took out 5x100 notes from the right side of his pant pocket. The numbers found in the 5x100 Rupees currencies tallied in the number noted in the Entrustment Mahazar. After providing a lungi to A2, A2 was asked to remove his pant and the pocket portion was subjected to phenolphthalein test. The shirt and pant of A1 and A2 respectively along with the tainted currencies were seized. The samples from the hand wash solution taken in separate bottles sealed and labelled.

7. Being satisfied that both A1 and A2 had received illegal gratification, Recovery Mahazar [Ex.P5] was prepared and completed at 14.35 hours by the Trap Laying Officer, Chitravel [PW.15]. He informed about the successful completion of the trap to the Deputy Superintendent of Police, Rengarajan [PW.16]. On receiving the information, PW.16 went to the EB office, Adambar @ Vishnupuram and arrested A1 and A2 for receiving illegal gratification from Senthilkumar [PW.2].

8. Rengarajan [PW.16], Deputy Superintendent of Police, V & AC, took up the investigation prepared Observation Mahazar [Ex.P6], seized the documents relating to the application given by PW.2, conducted search of the A1 and A2 houses and then remanded them to the judicial custody. He filed the final report was filed alter getting the sanction to prosecute from the Superintending Engineer [PW.1], TANGEDCO, Tiruvarur.

9. The proceedings to accord sanction to prosecute under the Prevention of Corruption Act is marked as Ex.P1. Mohanasundaram, the author of the sanction order examined as PW.1. The chemical analysis report of the samples drawn from the hand wash solution and shirt and pant wash solutions found the presence of Sodium Carbonate and phenolphthalein. The chemical analysis report marked as Ex.P17 through PW.14, V.S.Malliga, the Chemical Analyst.

10. The trial Court on appreciation of the evidence held that Ramamurthy [PW.3], the shadow witness has deposed about the receipt of Rs.1,500/- by A1 and Rs.500/- by A2 from PW.2. The demand of illegal gratification by A1 and A2 on the date of trap and prior to that spoken by PW.2. The recovery of M.O.3 series from A1 and M.O.7 series from A2 through PW.3 and Investigating Officer Chitravel [PW.15], the Deputy Superintendent of Police [PW.16], who joined the trap team subsequently and arrested A1 and A2 has also signed in the Recovery Mahazar. The scientific evidence as spoken by PW.14 and her report Ex.P.17 clearly proved the factum of demand and acceptance of illegal gratification. While the defacto complainant has paid the requisite fee for shifting and new service connection, there was no necessity for receiving money from PW.2 and what was received from PW.2 by A1 and A2 is not a legal remuneration. Having held so, the trial Court concluded that on considering PW.2 complaint and Pre trap Mahazar [Ex.P4], Recovery Mahazar [Ex.P5] and Chemical Report [Ex.P.17] and the chief examination of PW.2 and

PW.4 the prosecution has proved the case beyond reasonable doubt.

11. The learned counsels appearing for the accused/appellants made the following submissions:-

(i) The trial Court failed to note that the sanctioning authority [PW.1] has not applied his mind and he has referred in the sanction order [Ex.P1] that he has stated in the chief examination that he perused the First Information Report and the final report copy annexed along with the request letter stating that placing of final report copy before him only indicates that request for sanction was only an empty formality.

(ii) Referring the deposition of PW.2, the learned counsel contended that there is no averment in the evidence of PW.2 that A1 or A2 demanded bribe from him. The money was meant for office expenses and not illegal gratification. The insertion of the word "லஞ்சமாக" in Ex.P2 is an interpolation on the advise of the Investigating Officer. PW.2 is not a reliable witness and he had already been prosecuted for violation of Electricity Act and he had grudge over A1, who initiated penal action against the defacto complainant. PW.3, the shadow witness presence at the time and place mentioned is highly improbable.

Since the Investigating Officer had admitted that when PW.2 went to meet A1, PW.3 was standing outside the room and was not near PW.2 to watch the transaction. He is not able to describe the topography of the trap spot the inconsistency between the evidence of PW.2 and PW.3 regarding the preparation of solution and entrustment of tainted money leaves the case of PW.2 uncorroborated.

(iii) Referring the deposition of PW.3, the learned counsel for the appellants submitted that the complaint of PW.2 received by Chitravel [PW.15] on 04.01.2012 at 16.00 hours. PW.3 had deposed that the Deputy Registrar, Nagapattinam instructed him to meet Inspector of police, Vigilance and Anti Corruption at Nagapattinam, on 04.01.2012 at 6.30 p.m., and accordingly, he went to the vigilance office exactly at 6.30 p.m., and met the Inspector and other official witness Velusamy. PW.15 Chitravel had deposed that he received the complaint from PW2 at 4.00 p.m. After verifying the veracity of the complaint and permission of the Superintendent of Police, he registered the complaint in Crime No.1 of 2012 at 17.30 hours. So it is contended that the evidence of PW.15 about his request to send two official witnesses and in response to the request, Ramamurthy [PW.3] and Velusamy were present in the

DV & AC office on 04.01.2012 at 06.30 p.m., is improbable. The tainted money was forcible thrust by PW.2 in the pocket of A1 and the alleged recovery is doubtful. Further, it is contended that there is inconsistency in the case of the prosecution about the amount demanded as illegal gratification by A1. Further there is inconsistency in the case of prosecution whether 3x500 currencies and 5x100 currencies were entrusted PW.2 separately and kept separately by PW.2 or the entire Rs.2,000/- was kept in one place.

12. The learned counsel for the appellant/2nd accused contended that there is inconsistency in the case of prosecution regarding the place where the A2 received the money, PW.2 in contradiction to his own statement as stated that the money of Rs.500/- was given to A2 in his room at first floor opposite to the room of A1. Later, he had deposed that A2 came down with the register and in the ground floor, he demanded money and received it. PW.2 had deposed that 3x500 currencies smeared with phenolphthalein was kept in his right side pant pocket by Velusamy and 5x100 currencies smeared with phenolphthalein was kept in his left side pant pocket and he was having Rs.8,000/- in his shirt pocket. Whereas PW.2 had deposed that Chitravel/TLO gave the tainted money to Senthilkumar and he received it and kept it in his pocket. When A1 demanded money, PW.2 took out Rs.1,500/- from his right side pant pocket and gave it to A1. He had not said Rs.1,500/- and Rs.500/- was kept separately in the right and left side pocket respectively. This discrepancy and contradiction makes the evidence of PW.3 unreliable and his presence in the trap spot unbelievable.

13. The learned Government Advocate (Crl.Side) appearing for the State submitted that PW.2, the consumer who had constructed the first floor wanted single phase service connection to his shop and 3 phase connection to his residential building. The property stands in the name of PW.2's mother and therefore, two applications one for the shop and another for the residential building was made. To receive the fees, as a pre-condition, A1 demanded bribe and only on promise from PW.2 that he will pay the bribe money demanded, A1 initialled in the application to enable PW.2 to remit the fee.

14. Referring Ex.P7 and Ex.P14 the application forms for single and three phase connection and Ex.P9 and Ex.P13, the receipts, the learned Government Advocate (Crl.Side) submitted that the prosecution evidence is not contrary to each other as contended by the defence counsels. In fact their testimony is natural and PW.3, the official witness had no axe to grid against A1 and A2. PW.3 had clearly deposed about the demand and acceptance of money by A1 and A2. The office of PW.3 and the vigilance office both are located at Nagapattinam and the presence of PW.3 in the vigilance office at 6.30 p.m., on 04.01.2012 is not improbable as contended by the defence counsel.

15. Regarding the entrustment of the tainted money to PW.2, the learned Government Advocate (Crl.Side) submitted that the witnesses were examined 4 years after the occurrence and the fainted memory which is natural, cannot be exploited. The minor variations are natural and it will not shake the foundational fact of demand and acceptance of illegal gratification by the accused persons. The defence explanation of forcible thrusting of money in the pocket is only an imaginary explanation which has no force. The trial Court has rightly rejected the said explanation.

16. The learned Government Advocate (Crl.Side) referring the evidence submitted that there was demand of illegal gratification on four occasions. PW.2 has narrated all the four circumstances under which the demand was made. Ex.P7 is the application form in the name of PW.2 for service connection to the residence. In this application A1 has made endorsement for collecting Rs.6,850/- towards 3 phase service connection fees and same is also found in the register marked as Ex.P8. Previous day, a sum of Rs.1550/- been collected for the single phase connection to the shop. Ex.P9 is the receipt for Rs.50/- paid on 04.01.2012 at about 14.00 hours. On the same day, PW.2 has also deposited Rs.1,550/- which co-relates with the evidence of PW.2 that on 04.01.2012 A1 permitted him to pay for one connection and refused to make endorsement in the other application without collecting the bribe money.

17. Heard the learned Counsels and records perused.

18. Recovery of Rs.1,500/- from A1 and Rs.500/- from A2 is not denied. both the accused have come out with the defence that money was thrust inside the pocket. To show PW.2 had motive to fix them in the offence of taking bribe, 1st and 2nd accused have examined one witness each as DW.1 Samibalaiya is a relative of PW.2. He had deposed that 3 years prior to his date of deposition, he saw PW.2 quarrelling with A1. When he enquired them, he came to know that A1 pointing out the service line flowing very low near the shop of PW.2 and advised him to make arrangement for shifting the line which was not accepted by PW.2 and threatened PW.2 that he will see that PW.2 is removed from service. A2 has examined one Manoharan as DW.2 who had deposed that on 02.01.2012 when he went to EB office to report about power failure in his house, he saw PW.2 requesting A2 for shifting of meter box for the service connection stands in the name of his deceased father. Since the service was in the name of the dead person, A2 informed PW.2 that name transfer cannot be done immediately without legal heirs certificate. Infuriated by his refusal PW.2 threatened A2 that he will take action through vigilance police and see that he does not serve in EB office. To PW.2 it has been suggested about the energy theft case against the brother of PW.2.

19. The prosecution witnesses able to establish that till 05.01.2012, the application for new service connection in the name of PW.2 and his mother Amutha was not taken up for processing. On 05.01.2012, the request charge paid by PW.2 on the permission granted by A1. PW.2 and PW.15 consistently had spoken that the tainted money of Rs.1,500/- and Rs.500/- were kept separately. Rs.1,500/- in the right side pocket and Rs.500/- in the left side pocket. PW.3 had not spoken specifically about the entrustment of the money separately on the two sides pockets. This omission cannot be a reason to disbelieve the testimony of PW.3 about his presence at the trap spot. He being a responsible officer in the Cooperative Department had come to the vigilance office on the previous day on the instructions of his superior officer and been along with trap team. His presence in the trap spot at the time of trap is not disputed. The transfer of tainted money from PW.2 to A1 and A2 seen by him and deposed. The possession of the tainted money is accepted by A1 and A2.

20. The money transferred from PW.2 to A1 and A2 is an undisputed fact. The dispute is whether it was voluntarily received by A1 and A2 or forcibly kept in their pocket. While 3x500 =1,500 was found in the shirt pocket of A1 and 5x100 notes were found in the right side pant pocket of A2. As an explanation how that money went to their pocket, both A1 and A2 alleged that the money was forcibly kept by PW.2 inside their pocket.

21. The short point now for consideration is whether such forcible entrustment in the pocket is possible and if it was done to A1 and A2 one after another, why there was no reaction for such thrusting is the moot question. This question can be answered only by A1 and A2, but they have not given any explanation for that either 313 Cr.P.C., question or through independent witness.

22. DW.1 and DW.2 are examined to show that there was animosity existing between PW.2 and the accused. Even assuming that there was an animosity, the recovery of tainted money from their possession is not denied. It is the burden of A1 and A2 to explain how the money came into their possession. In this case, both A1 and A2 is not able to explain by any preponderance of probability how the money came into their possession. In the memorandum of statement filed in response to the questioning under Section 313 Cr.P.C., it is contended that the application in the name of Amutha cannot be entertained, but one Mahendran staff of TANGEDCO had erroneously accepted the application.

23. It is also contended that the fees for shifting and new connection was paid only after the trap. While the prosecution had explained which also finds place in the Recovery Mahazar, that when PW.2 remitted Rs.6,850/- there was power cut and therefore, the staff in the cash counter requested him to wait till the power supply is restored to get the receipts.

24. Referring the action taken against PW.2 earlier for energy theft, it is contended that there was strong motive for PW.2 to give false complaint. The said explanation is no way near possible for the possession of tainted money. In the contest given it is not mere recovery of tainted money, but the lack of plausible explanation for the possession of the money strengthens the prosecution case. Therefore, this Court finds no illegality in the conviction slapped on the appellants, who have receiving bribe of Rs.1,500/- and Rs.500/- respectively from PW.2 for providing service connection. However, as stated by the learned counsel for the appellants that the term of sentence for the offence is disproportionate to the quantum of money accepted as bribe. Hence it is necessary to interfere the period of sentence. Accordingly the sentence is modified as below:

Accused	***Offence under Section***	***Conviction and Sentence imposed by the trial Court***	***Conviction and Sentence imposed by this Court***
A1 & A2	7 of P.C.Act	To undergo **three years R.I** and to pay fine of Rs.1,000/- in default to undergo S.I for three months	To undergo **one year R.I** and to pay fine of Rs.1,000/- in default to undergo S.I for three months
	13(2) r/w.13(1)(d) of P.C.Act	To undergo **three years R.I** and to pay fine of Rs.1,000/- in default to undergo three months S.I	To undergo **one year R.I** and to pay fine of Rs.1,000/- in default to undergo three months S.I

25. With the above modification, these ***Criminal Appeals are partly***

allowed. The trial Court is directed to secure the appellant/accused and commit them to prison to undergo the remaining period of sentence. The period of sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C.

27.09.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order

rpl

To:-

1.The XI Additional Special Judge (CBI Cases relating to Banks and Financial Institutions), Chennai

2.The Inspector of Police,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai.

3.The Special Public Prosecutor (CBI), High Court, Madras.

DR.G.JAYACHANDRAN,J.

rpl

Pre delivery common Judgment made in
Criminal Appeal Nos.490 and 532 of 2020

27.09.2023