



Crl.A.Nos.341 & 377 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 12.09.2023

Pronounced on: 27.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.341 & 377 of 2017

Crl.A.No.341 of 2017

C.Sridhar,
S/o.Cuppusamy,
No.33, Sengani Amman Kovil Street,
Koombakkam, Villiyanur Post,
Puducherry – 1.

... Appellant/Accused No.1

/versus/

1. State,
Inspector of Police,
CPE/CBI/ACB/Chennai.
In RC No.68 (A)/2008-CBI-ACB-Chennai.

... Respondent/Complainant

2. A.Ambalavanan,
S/o.Arumugam,
No.11, Alamaram Street, Chinnakalpet,
Puducherry – 14.

... Respondent/Accused No.2

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, pleaded to set aside the judgment dated 15.06.2017 made in Spl.C.C.No.2 of 2009 on the file of Special Judge, under the Prevention of Corruption Act, Pondicherry.



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For Appellant : Mr.Gopalakrishna Lakshmana Raju, Sr.Counsel
for Mr.T.Saikrishnan.

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I)

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Ambalavanan, Male Age 35 Yrs,
S/o.Arumugam,
No.11 Alamaram Street,
Chinnakalapet,
Puducherry – 14.

... Appellant/Accused A-2

/versus/

State Rep. by
Inspector of Police,
SPE/CBI/ACB/Chennai.

R.C.No.60(A)/2008-CBI-ACB/Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, pleased to set aside the judgment dated 15.06.2017 made in Spl.C.C.No.2 of 2009 passed by the Special Judge, Puducherry, for convicting the appellant.

For Appellant : Mr.D.Prasanna,

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I)



COMMON JUDGMENT

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Case of trap by C.B.I based on the complaint dated 18/12/2008 given by one Ramesh against Sridhar, the Sub-Inspector of Police at Orleanpet Police Station, Union Territory of Pondicherry, for demanding bribe of Rs.5000/- to close the complaint of one Dhanalakshmi given against Ramesh. The bribe money of Rs.5000/- received by one Ambalavanan, Advocate, who stood as mediator for the dealing. Ambalavanan, after taking Rs.3000/- gave Rs.2000/- to Sridhar, the Sub-Inspector of Police. Both were caught with the tainted money by the Trap Team at about 19.40 hrs, on 18/12/2008 near Manimegalai Government Girls Higher Secondary School, Nellithope.

2. On completion of investigation, final report against Sridhar (A1) and Ambalavanan (A2) filed. Based on the materials placed before the Court, charges under Section 120-B of I.P.C and 13(2) r/w 13(1)(d) r/w Section 7 of P.C Act, 1988 framed against A-1. As against A-2, charges under Section 120-B of I.P.C and Section 9 of P.C Act, 1988 was framed.

3. To prove these charges, the prosecution marshalled 11 witnesses (P.W.1 to P.W.11), marked 28 exhibits (Ex.P.1 to Ex.P.28) and 9 material



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objects (M.O.1 to M.O.9). On the side of the defence, two documents were

Exhibited (Ex.D.1 to Ex.D.2).

4. The trial Court convicted both the accused/A1 and A-2 and sentenced them to undergo imprisonment as below:-

<i>Rank of the Accused</i>	<i>Offences under Section</i>	<i>Conviction and Sentence passed by the trial Court.</i>
A-1	120-B of I.P.C	To undergo 3 months R.I and to pay fine of Rs.1000/-, in default to undergo one month R.I
	13(2) r/w 13(1)(d) r/w Section 7 of P.C Act	To undergo 3 years R.I and to pay fine of Rs.10,000/-, in default to undergo three months R.I
A-2	120-B of I.P.C	To undergo 3 months R.I and to pay fine of Rs.10,000/- in default to undergo three months R.I
	Under Section 9 of P.C Act	To undergo three years R.I and to pay fine of Rs.10,000/- in default three months R.I.

5. Being aggrieved by the order of trial Court, A-1 has preferred Crl.A.No.341 of 2017 and A-2 has preferred Crl.A.No.377 of 2017.

6. The Learned Counsel appearing for the appellants submitted that, the case of the prosecution bristles with infirmity, illegality and improbability right from inception. Pointing out the contradictions about the



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time of the complaint, the manner in which complaint received by the Superintendent of Police, C.B.I at Chennai and registration of complaint submitted that, oral complaint through phone alleged to have been received by Superintendent of Police at Chennai on 18.12.2008 morning. It took shape of a written complaint only at 02.45 p.m at Pondicherry. According to the prosecution, the evidence of P.W.11 Venkatesh, Inspector of Police, CBI, ACB, who claims to have receive fax message of written complaint along with verification report, which form basis for registration of F.I.R at 5.00 p.m does not tally the time of preparation of these documents as spoken by P.W.2 and P.W.9.

7. The Trial Court failed to appreciate the material contradictions found in the prosecution witness. P.W.2 is wholly unreliable evidence. However, his testimony been accepted by the trial Court, despite material contradictions between his evidence and the official witness. The embellishment in the recovery mahazar not been taken note by the trial Court. The recovery of tainted money from A1 & A2 at Manimegalai Government Girls Higher Secondary School is highly improbable and not been substantiated by worthy oral and documentary evidence. The testimony of P.W.2 contrary to



his previous statement and complaint ought to have been discarded by the trial

Court in *toto*. In the complaint Ex.P.3, there is no whisper about the demand of bribe by A-2. However, in his testimony, P.W.2 had fully implicated only A-2 for demand and acceptance. Admittedly the money was not given to A-1 or he demanded money to P.W.2. While so, on entirely new facts introduced during trial and same been accepted by the trial Court which has led to miscarriage of justice. The presence of Ramesh P.W.2 at Orleanpet Police Station on 18.12.2008 at 03.30 hours is borne by record (Ex.D.1) and also spoken by P.W.3, P.W.5 and P.W.6. While so, the preparation of entrustment mahazar at business premises of P.W.2 in his presence during the same time is improbable.

8. The trial Court failed to take note of the fact that, P.W.3 the shadow witness had deposed that, he and P.W.2 went to Orleanpet Police Station on receipt of phone call from P.W.5, the Head Constable Arumugam. At that time, the trap money of Rs.5000/- smeared with phenolphthalein was in possession of P.W.2. After the complaint given by P.W.6 was settled and recorded in the CD file, P.W.2 tried to offer that money to A-1. This is totally contrary to the prosecution case as spoken by P.W.2. Therefore, the Learned Counsels pleaded that, registration of the complaint till recovery of tainted



money, the case of the prosecution is heavily loaded with contradictions and falsity. Hence, it has to be rejected and the appellants should be acquitted.

9. Per contra, the Learned Special Public Prosecutor appearing for C.B.I submitted that, the incidence took place during the month of December 2008 whereas, the prosecution witnesses were examined after four years. Lack of memory due to efflux of time had caused minor discrepancies regarding time and place. These discrepancies are very trivial and rightly ignored by the trial Court. The fact that, the tainted currency of Rs.2000/- from the possession of A1 and Rs.3000/- from A2 recovered in the trap proceedings conducted at Manimegalai Higher Secondary School at 17.40 hours was earlier entrusted to P.W.2 at Gorimedu. There is no plausible explanation from A1 and A2 regarding the recovery of money from their possession. The closure report of the complaint given by Dhanalakshmi, prior to the trap is a strong evidence to show that, the money was received as illegal gratification to close the complaint given by Dhanalakshmi (P.W.6) against Ramesh P.W.2. From the evidence of S.Anjammal, P.W.7, then Inspector of Police, All Women Police Station and P.W.5 Arumugam, Head Constable, Orleanpet Police Station prove the fact that, Dhanalakshmi has given the complaint against P.W.2 for retaining her



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Driving License, Passport, R.C Book of her vehicle bearing Reg.No.PY-01-Y-

4536 and jewels. Driving license and R.C Book was returned by P.W.2 to Dhanalakshmi in the presence of A-1 Ramesh at Orleanpet Police Station. P.W.2 also promised to return the Passport of Dhanalakshmi which was in possession of one Prakash, who is the foster son of Dhanalakshmi. The mortgage of jewels at HDFC Bank by P.W.2 is spoken by P.W.8 V.Manoj Kumar, the then Branch Manager of HDFC Bank, Puducherry. Therefore, the prosecution has proved the fact that, the complaint was pending against P.W.2 Ramesh at Orleanpet Police Station and not to arrest P.W.2. A-1 has demanded Rs.5000/- as illegal gratification through A-2 an Advocate by Profession. The bribe money (M.O.5 series) (5 x Rs.1000) came to be recovered from A-1 and A-2. The Chemical Examiner Ms.A.Visalakshi examined as P.W.10 and her report marked as Ex.P.26 prove the fact that, the hands of A-1 and A-2 found presence of phenolphthalein. Therefore, the Learned Special Public Prosecutor for the respondent/C.B.I sought for confirmation of the trial Court judgment.

10. The respective submission made by the Learned Counsels for the appellants and the respondent same taken up for consideration.



11. Ramesh (PW-2) in his written complaint dated 18/12/2008

(Ex.P.3) had stated that, one Dhanalakshmi (P.W.6) had a dispute with him over jewels given to him for raising loan. Regarding this issue, on 14/11/2008 Dhanalakshmi gave a complaint to the All Women Police. Tmt.Anjammal, the Inspector of Police attached to AWPS enquired the matter and referred the complaint to the local police being a money dispute. A month later, on 17/12/2008, at about 07.00 p.m, he received a phone call from Sridhar (A1), Inspector of Police, Orleanpet. Sridhar (A1) asked him to come to the Police Station for enquiry regarding the written complaint given by Dhanalakshmi. When he went to the Police Station and met A-1, he explained about the falsity in the complaint. A-1 then told him to return the Passport and Driving License of Dhanalakshmi next day and for not to arrest him in the case, he demanded Rs.5000/-. A-1 instructed him to bring the money on 18/12/2008 at 5.30 p.m along with the Passport and Driving License of Dhanalakshmi.

12. P.W.2, in his chief examination had deposed that, on 18/12/2008 at about 9.00 a.m, he called the C.B.I Office at Chennai and informed about the demand of illegal gratification to the Superintendent of Police. Superintendent of Police, C.B.I promised to send a team within 3 hours



and if everything is in order, they will take action. The CBI Team came to his Office at Gorimedu between 1.30 to 2.00 p.m. On the left side of the complaint addressed to the Superintendent of Police, CBI Chennai, there is an initial with date and time as 18/12/2008, 11.50 p.m.

13. P.W-9, Raja, Inspector of Police, C.B.I, who led the trap team had deposed that, he received the instruction from his Superintendent regarding the complaint of Ramesh on 18/12/2008 at about 8.00 am. The Trap Team reached Pondicherry and met Ramesh at about 2.30 pm and received the written complaint Ex.P-3 from him. After conducting preliminary enquiry, he prepared the verification report Ex.P-22 and informed the Superintendent of Police about it. After getting permission from the Superintendent of Police, at about 04.05 p.m, he arranged for pre-trap proceedings. Two witnesses Pitchaimuthu (P.W.3) and Sachithanandam (not examined) were requested to be witnesses to the trap proceedings. The phenolphthalein–sodium carbonate test demonstrated to them and then, the bribe money of Rs.5000/- smeared with phenolphthalein was entrusted to P.W.2. After entrustment, the mahazar (Ex.P-4) drawn and completed at 17.10 hrs. The trap team then left to the Orleanpet Police Station. P.W.2 and P.W.3 went inside the Police Station. The other members of the



team waiting outside the Station. At about 19.20 hrs, P.W.2 and P.W.3 came out from the Police Station and informed P.W.9 that, A-1 asked them to meet near Manimegalai Government Girls Higher Secondary School.

14. In this connection, the testimony of P.W-2 and P.W-3 differs and in contradiction to each other. While P.W.2 had deposed that, when they went to the Police Station, A-2 who promised to come from the Court did not turn up. So, they went inside the Police Station and met A-1. A-1 enquired them what for they have come. Then P.W-2 told A-1, he has come since A-2 told to meet him. At that time, A-1 got a phone call. Then A-1 asked them to meet the Head Constable and left the Police Station. Later, A-2 came to Police Station and called A-1 over phone and told P.W.2 that, A-1 is waiting near Manimegalai Government Girls Higher Secondary School and can go there and give the money. Whereas, P.W-3 had deposed that, while he along with the trap team engaged in pre-trap proceedings, Arumugam, the Head Constable of Orleanpet Police Station called P.W-2 and told P.W-2 to bring the Passport, R.C Book and Driving License (of Dhanalakshmi). P.W.2 was informed that, A-1 is waiting for him in the Police Station. Then, he along with P.W-2 proceeded to the Orleanpet Police Station, the trap team followed them. He and



PW-2 went to the Police Station. In the Police Station, A-1, A-2 and Dhanalakshmi (PW-6) were present. As instructed by A-1, they both went to the Head Constable room and P.W.2 gave the R.C Book and Driving License to the Head Constable. P.W.2 told the Passport of Dhanalakshmi is with her foster son Prakash. The Head Constable recorded the handing over of RC Book and Driving License, got the signatures of P.W.2 and P.W.6 and told he will close the file. Then, he and P.W.2 went to the room of A-1. As directed by A-2, P.W.2 took out Rs.5000/- and gave it to A-1, but A-1 refused to receive it. After sometime, A1 left the police station. Then he came to know from P.W.2 that, A-1 told A-2 that, he will receive the money at Manimegalai Government Girls Higher Secondary School. Then they proceeded to the School. The presence of A-2, Dhanalakshmi (P.W.6) in the Police Station and the entry in GD recording settlement at 3.30 p.m disproves the case of the prosecution regarding the time they entrustment completed and their visit to Orleanpet Police Station.

15. Regarding obtainment of the money, it was A-2 who received the money and took it to A-1 who was waiting near the Manimegalai School. P.W.2 says that, he gave the tainted money to A-2 and asked P.W.3 to go with



A-2 and ensure A-2 gives the money. He was watching from his car, A-2 handing over the money to A-1. Whereas, P.W.3 had deposed that, A-2 after receiving the money, went to the rear side of the car and took a bunch of currency from Rs.5000/- and pocketed and then went to A-1 and gave the balance to A1. As per Ex.P.5 the recovery mahazar, Rs.3000/- recovered from A-2 which he was keeping in his shirt pocket. Rs.2000/- recovered from A-1 which he kept in a paper folder containing phone numbers. Contrary to the content in the mahazar (Ex.P-5), the defacto complainant P.W.2 had deposed that, A-1 took out two 1000 rupees currency and gave it to Trap Laying Officer. His evidence is silent from where he took that money. P.W.3 had said that, when Trap Laying Officer asked about the money received from A-2, A-1 gave the two 1000/- rupees currency. P.W-9, the Trap Laying Officer, in his deposition had said, he asked A-1 to give Rs.2000/- received from A-2 to the independent witness (name not mentioned) and the independent witness receive it from A-1 and verified the numbers mentioned in the entrustment mahazar and said the numbers tallies. Neither P.W-3 nor P.W.9 had said that, A-1 was keeping the money in the paper folder containing phone numbers.



16. The paper folder in which the tainted money kept by A-1 according to the recovery mahazar which is the contemporaneous document, conspicuously missing in the evidence of P.W.2, P.W.3 and P.W.9. It is neither before the Court. The prosecution witnesses convenient omission to mention about it, makes the very recovery of tainted money from A1 doubtful.

17. Further, from the evidence of P.W.3 and Ex.D.1 entries in Ex.P.10 the General Dairy of Orleanpet Police Station, it is established beyond any pale of doubt that, on 18/12/2008 at about 3.30 pm, Ramesh (PW-2) was in the Orleanpet Police Station and signed in the GD along with Dhanalakshmi (P.W.6) recording settlement and the fact Ramesh handing over of Driving License and R.C Book of Dhanalakshmi forms part of GD. While so, the entrustment mahazar Ex.P.4 which is purported to have commenced at 16.30 hrs and completed at 17.10 hours ought to have been done after P.W.2 visit to Orleanpet Police Station and the complaint of Dhanalakshmi (Ex.P.11) ended in compromise at 3.30 p.m.

18. The Trap Laying Officer Mr.Raja PW-9, had deposed that, he along with the trap team came in a car from Chennai and reached Pondicherry



at about 01.45 pm. They met P.W-2 at his business premises on 18/12/2008 at about 02.45 pm. He got the complaint Ex.P.3 from PW-2. He made verification and prepared the verification report Ex.P.22. Then commenced the pre-trap proceedings after arranging for two official witnesses. In Ex.P.3, it is already noted that there is an initial with date and time as 11.30 p.m dated 18.12.2008.

19. One of the official witness Mr.Pitchamuthu examined as P.W-3 had deposed that, as per the direction of his Divisional Manager, he went to Gorimedu, Mettupalayam and met C.B.I, Inspector Raja P.W-9 on 18/12/2008 at 4.05 pm. He saw Ramesh was present. Neither P.W.9 nor P.W.2 had disclosed that, when P.W.2 left his business premises and went to Orleanpet Police Station to hand over the R.C book and Driving license of Dhanalakshmi. The suppression of this fact, creates doubt about the entrustment mahazar.

20. The evidence of P.W-5 Arumugam, Head constable of Orleanpet Police Station, P.W-6 Dhanalakshmi and the entry in the General Duty marked as Ex.D-1, all prove the fact that, P.W-2 was in the Orleanpet Station at 3.30p.m and signed in the General Duty. If, P.W.9 evidence about



his arrival to Pondicherry and receiving the written complaint at 2.45 pm which does not say anything about A-2 is true, then after receiving the complaint, he had allowed P.W-2 to go to Orleanpet Police Station on receiving call from the Head Constable Arumugam P.W-5 and at that time, P.W.2 was carrying the tainted money.

21. On analysis of the prosecution evidence, the following contradictions looms large to suspect the case of the prosecution to the core.

a). P.W.2 had deposed that, he called Superintendent of Police, C.B.I over phone on 18.12.2008 at 9.00 a.m. Whereas, P.W.9 Raja had deposed that, when the Superintendent of Police informed him about the information, it was 8.00 a.m in the morning of 18.12.2008.

b). Ex.P.3 is the written complaint of P.W.2. According to P.W.2, he gave the complaint to P.W.9, when he met him at Gorimedu. P.W.9 admits that, he say P.W.2 for the first time on 18.12.2008 at 02.45 p.m and he received the complaint from him at that time. However, the initial in Ex.P.3 shows, it was received at 11.30 p.m. P.W.11 Venkatesan had deposed that, the



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Superintendent of Police gave him the fax copy of the complaint given by Ramesh and the verification report of Raja to him and requested him to register the F.I.R. F.I.R came to be registered at 5.00 p.m on 18.12.2008.

c). Ex.D.1 proves that, P.W.2 was at Orleanpet Police Station till 3.30 p.m on 18.12.2008 whereas, P.W.2 as well as P.W.9 had deposed that, they were engaged in pre-trap proceedings from 02.45 p.m to 17.10 hrs at Gorimedu.

d). P.W.3 has deposed that, after completion of entrustment proceedings, P.W.2 got a phone call from Arumugam, Head Constable (P.W.5) informing that Inspector Sridhar (A1) is waiting at Orleanpet Police Station, for the arrival of P.W.2 along with R.C Book and Driving License. Immediately, he along with P.W.2 and the trap team went to Orleanpet Police Station. He has specifically deposed that, at Orleanpet Police Station, after entering the compromise in the General Duty, P.W.2 offered the tainted money to A-1 and A-1 refused to receive it.



e). If the timing mentioned in the entrustment mahazar is true, then

it is impossible for the accused to be in the Orleanpet Police Station at 3.30 hrs and offering the tainted money of Rs.5000/- to A-1.

f). Regarding the recovery from A-1, the prosecution witness has not stated from where the two Thousand Rupees notes smeared with phenolphthalein was recovered.

22. The prosecution case is that, soon after the C.B.I team rounded A1 & A2 near Manimegalai Government Girls Higher Secondary School, crowd gathered and to avoid unnecessary publicity, A-1 and A-2 were taken inside the school. At that time, where and how A1 was keeping the tainted money is the question left open and unanswered by the prosecution. Therefore, mere presence of phenolphthalein in the hands of the accused A-1 cannot be a reason to presume that, he had obtained money from A-2 as illegal gratification. It is to be noted that, in the complaint (Ex.P.3), the demand of illegal gratification is directly attributed to A-1. Whereas, during the deposition before the Court, P.W.2 had only attributed the demand of illegal gratification to A-2 on behalf of A-1. Later, the prosecution case has turned that, from out of



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Rs.5000/- received from P.W.2, A-2 has pocketed Rs.3000/- and gave only Rs.2000/- to A1. How A-1 received that money, where he kept that money till it was recovered are the facts very crucial in this case but not stated either in the recovery mahazar or in the oral evidence of P.W.2, P.W.3 and P.W.9. This grave omission is a serious lapse on the prosecution.

23. For the above said reasons, the case of the prosecution has to fail. The judgment of the trial Court which has failed to consider the contradicts in the facts is to be set aside.

24. In the result, these ***Criminal Appeal Nos.341 of 2017 & 377 of 2017 are allowed.*** The judgment of the trial Court passed in Spl.C.C.No.2 of 2009 on the file of Special Judge, Puducherry is hereby set aside. Fine amount paid if any, shall be refunded to the appellants/A1 & A2. Bail bond executed by the appellants shall stands cancelled.

27.09.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
bsm



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DR.G.JAYACHANDRAN,J.

bsm

Copy to:-

1. The Special Judge, under the Prevention of Corruption Act, Pondicherry.
2. The Inspector of Police, CPE/CBI/ACB/Chennai.
3. The Public Prosecutor, High Court, Madras.

Delivery common judgment made in
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27.09.2023