IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A. No.846 of 2018

B.Raghavan .. Appellant

Vs.

State represented by
the Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram.
(Crime No.2/2012) ..Respondent

PRAYER : Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to set aside the order of conviction and sentence dated 17.12.2018 on the file of the Special Court for Prevention of Corruption Act by Villupuram in Spl.Case No.35 of 2014 by allowing this appeal.

For Petitioner : Mr.A.V.Arun

For Respondent : Mr.R.Ravichandran,
Government Advocate (Crl.Side)

ORDER

Being aggrieved by the conviction and sentence passed by the trial Court in Spl.S.C. No.35 of 2014 on the file of the Special Court for Prevention of Corruption Act, Villupuram, this appeal is filed by the accused.

2. The sum and substance of the prosecution case is that Mr.M.Athimoolam, who is the resident of Bheerangimedu, Gingee possessed ancestral property in S.No.29/1. Since the High Tension line passing across his land was hindrance for his agricultural activity, he approached the Assistant Engineer Office for shifting of High Tension line. His application dated 07.02.2012 was forwarded to Junior Engineer for preparation of estimation. For processing his application Athimoolam has paid Rs.500/- on 26.03.2012. The Junior Engineer, who is the appellant herein prepared the estimation and forwarded it to the Assistant Executive Engineer (AEE) which was received by AEE on 30.04.2012.

3. While so, the case of the prosecution is that Athimoolam when met the accused (Junior Engineer) on 30.04.2012, he demanded Rs.10,000/- as illegal gratification for processing the application and to prepare the estimation. He also informed the defacto complainant that the estimation will come around Rs.1,41,506/-. Apart from estimation costs, illegal gratification of Rs.10,000/- has to be given. After contemplating over the illegal demand of accused, Athimoolam decided to lodge a complaint before the Vigilance and Anti Corruption Police. Accordingly, he gave his written complaint on 02.05.2012 reporting about the demand of illegal gratification by the Junior Engineer Raghavan.

4. The Inspector of Police who received the complaint, registered a case in Crime No.2/12/AC/Villupuram at 09.00 hours. A part of the bribe money i.e., Rs.5,000/- which according to the complainant demanded by the Junior Engineer to be paid on that date, smeared with phenolphthalein powder and entrusted to the defacto complainant under

Entrustment Mahazar Ex.P5. The shadow witness Mubarak PW.3 was asked to accompany with the defacto complainant PW.2 to the office of the Executive Engineer and meet the accused and give the tainted money, if the accused demands it.

5. Accordingly, at about 12.30 hours, Athimoolam PW.2 and Mubarak PW.3 went to the office of the Executive Engineer, TNEB. The accused who was in his office told the defacto complainant to come to the house at about 2.30 pm. Thereafter, PW.2 and PW.3 went to the house of the accused by 3.00 o' clock. At that time, the accused was taking his lunch. On seeing PW.2 and PW3, he came out and showed a bunch of paper to PW.2 to keep the tainted money on it and then took the money. Thereafter, the trap laying officer has entered the house and conducted search and recovered the money.

6. Phenolphthalein test was conducted in the left hand finger of the accused and it turned pink. The sample solution was collected in a

bottle, sealed and labeled. The right hand wash did not show any change of color. Thereafter, on identifying the tainted money on the floor kept on bunch of paper same was recovered under the seizure mahazar which is marked as Ex.P6.

7. The trial Court believing the case of PW.2 and the other evidence for the prosecution, has held the accused guilty and sentenced him to undergo five years Rigorous Imprisonment with a fine of Rs.5,000/-, in default to undergo six months Simple Imprisonment for the offence under Section 13(1) r/w.13(1)(d) of Prevention of Corruption Act, 1988 and sentenced him for four years Rigorous Imprisonment with a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment under Section 7 of Prevention of Corruption Act, 1988. Being aggrieved by the conviction and sentence, the appeal been preferred before this Court.

8. The learned counsel appearing for the appellant submitted that

the case of the prosecution is full of infirmity and illegality. The contradiction in the prosecution witness has not been properly considered by the trial Court. Particularly, on 30.04.2012, the date on which the alleged first demand was made, the accused was not at all in the EB office, Gingee. He was attending the meeting and furthermore, on that date, the estimation for shifting the high tension line from the defacto complainant land had already been made ready and forwarded to the Assistant Executive Engineer office. Regarding the second demand on the date of trap, the prosecution case is unbelievable due to the contradiction between PW.2, the defacto complainant and PW.3, the shadow witness and PW.6, the trap laying officer.

9. The learned counsel for the appellant particularly submitted that through PW.1, the sanctioning authority it is proved that the application of the defacto complainant dated 07.02.2012 was forwarded to the accused for estimation and the rough estimation was made ready and forwarded back to AEE on 26.03.2012, soon after, the defacto

complainant paid the request fee. Thereafter, the AEE has returned back the application to make the revised estimation in view of the fact that after the end of the financial year 2011-2012, estimation requires revision. On 04.04.2012, the proposal received by the accused back for re-estimation and the same was considered by the accused and resubmitted to AEE on 12.04.2012 after fixing the estimation cost as Rs.1,55,377/-. While so, the allegation of demanding illegal gratification on 30.04.2012 to forward the estimation is contrary to the records. This complaint is the retaliation for the raid conducted on the Rice Mill premises of the Ex.MLA, the defacto complainant being the former driver of the Ex.MLA, through him the Ex.MLA wanted to settle the score.

10. Learned counsel also submitted that PW.3 had deposed that when PW.2 went to the house of the accused at 02.30 pm, the accused and his family members were on the floor squatted and having their lunch. On seeing PW.2, the accused came out of the house and enquired

about the money. If it is so, the seizure mahazar should have been mentioned about the occupants of the house at the time of search, but conspicuously such information is missing.

11. The learned counsel also submitted that the money was planted by PW.2 on the floor and no trace of phenolphthalein was in the hands of the accused. It was PW.2, who had handled the tainted currency smeared with phenolphthalein powder and left the papers MO.5 and the tainted currency MO.1 series on the floor of the accused house for the trap laying officer (P.W.7) to come and recover it.

12. Per contra, the learned Government Advocate submitted that the accused in his left hand handled the phenolphthalein smeared currency and the phenolphthalein test conducted proved positive. Hence the accused is bound to explain the possession of currency which was on the floor of his house consciously kept by him. The presumption under Section 20 of PC Act, 1988 for offence under Section 7 of PC Act, not

been rebutted by the accused by any probability. Regarding the contradiction between the version of PW.2 and PW.3 about their meeting of the accused at 12.30 pm in the office of AEE, TNEB, learned Government Advocate submits whether the accused was in his office room or standing outside and having conversation with somebody else is a minor contradiction and it will not affect the fundamental fact. The fact of the matter is that when PW.2 and PW.3 went to the AE office, the accused was present in the office and told PW.2 to come and meet him at his residence.

13. Heard, learned counsel and records perused.

14. This Court on perusing the evidence and documents finds that the defacto complainant PW.2 has made his application Ex.P2 on 07.02.2012. The defence document Ex.D1 is the estimation prepared by the accused and it is dated 26.03.2012 along with covering letter. This estimation has reached the office of AEE who in turn had sent back the

estimation with a note mentioning that it may be resubmitted with revised estimation.

15. According to the accused he prepared the revised estimation and resubmitted Ex.P.22 along with the covering letter from JE to AEE, wherein, it is stated that estimated costs worth Rs.1,53,377/- and on the part of the consumer, he has to pay Rs.1,41,605/-. This communication dated 12.04.2012 received by the AEE and on the back of Ex.P.22, an endorsement made by AEE and the same is marked as Ex.D2. From this endorsement, this Court is able to see that a proceeding dated 17.04.2012 submitted to the EE, Gingee, for further action seen and signed by AEE on 19.04.2012.

16. Thereafter, prosecution is not able to explain, how this document which had been referred to AEE for further action went back to the accused when PW.1 had categorically deposed that after forwarding the application, accused has nothing to do with regard to

shifting of the line there must be a reason for the accused to make a demand of illegal gratification from the defacto complainant on 30.04.2012, much after completion of preparing the estimation and forwarding it to his superior officer. That apart the contradiction between PW.2 and PW.3 regarding pre-trap proceedings as well as trap proceedings give room to doubt about the case of the prosecution.

17. It is pertinent to note that according to the prosecution, the tainted currency was laying on the floor and it was kept on a bunch of paper marked as M.O.5. According to the prosecution M.O.5 is some official Government paper. It is suggested to the witness particularly PW.2 that paper was handed over to PW.2 by one Gunasekaran with instruction that tainted money must be kept inside the bunch of paper and to be given to the accused. Though this suggestion been denied by PW.2, from the seizure mahazar, this Court is unable to find what is the nature of the documents or paper marked as M.O.5 and how the official document found at the house of the accused.

18. To add, it is the silence of the Investigating Officer omitting to mention the presence of family members in house of the accused at the time of search throws the case of the prosecution out, from any consideration. The trial Court has miserably failed to look into this grave suppression and the explanation given by the accused regarding the recovery of money gains significance.

19. In the light of the above facts, this Appeal is allowed. The judgment of the Trial Court is set aside. The appellant is set at liberty. Fine amount paid, if any by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand discharged.

14.09.2023

Internet : Yes/No
Index: Yes/No
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To

1. The Special Judge for Prevention of Corruption Act,
 Villupuram.
2. The Deputy Superintendent of Police,
 Vigilance and Anti-Corruption,
 Villupuram.
3. The Public Prosecutor,
 Madras High Court, Madras.

Dr.G.JAYACHANDRAN, J.

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