BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.11.2022

Pronounced on : 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.210 of 2017

State represented by
The Public Prosecutor,
High Court, Madras-104,
for the Inspector of Police,
(Crime No.16/2006
of Vigilance & Anti-Corruption,
Theni) : Appellant/Complainant

Vs.

1.V.Pandi
2.I.Selvaraj : R1 and R2/A1 and A2

Prayer: Criminal Appeal filed under section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal passed by the Chief Judicial Magistrate-cum-Special Court for Trial of cases under the Prevention of Corruption Act, Theni, in Special Case No.1 of 2014, dated 28/03/2017.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For 1st Respondent : Mr.V.Neelakandan

For 2nd Respondent : Mr.J.Lawrance

J U D G M E N T

This criminal appeal has been preferred against the judgment of conviction passed in Special Sessions Case No.

01 of 2017 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act cases, Theni.

2.**The case of the prosecution in brief**:-

PW2 is the de-facto complainant. He applied for gun licence. For the purpose of making recommendation, the accused alleged to have demanded Rs.5,000/- as bribe and that was reduced to Rs.2,000/-, which was received by A1, on 22/09/2006 as illegal gratification for the purpose of performance of his official duty. A2 demanded Rs.500/- as bribe amount to make the further process. On the basis of the complaint given by the de-facto complainant, a case under section 7 of the Prevention of Corruption Act 1988 was registered and trap was laid. The accused persons were arrested and after completing the formalities of the investigation, filed final report. After completing 207 Cr.P.C proceedings, framed the charges for the offences under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.During the trial process, on the side of the prosecution, 10 witnesses have been examined and 21 documents marked, apart from 9 materials objects marked. On the side of the accused, one witness was examined and no document was marked.

4.At the conclusion of the trial process, the trial court found the accused persons not guilty and acquitted them from the charges levelled against them.

5.**<u>The case of the prosecution, as narrated through the evidence</u>**:-

The de-facto complainant is owning property in Gudalur area. They are planting and cultivating coffee and pepper. He made a request for gun licence to the District Collector, Theni. In 2006, he was enquired by DRO. He was informed that for the purpose of issuing gun licence, recommendation was made by the police after enquiry. After five years, the above said petition was enquired and he was informed that the police enquiry is going to be undertaken. After seven or eight days, an official from the Kurangani Police station informed him to approach the Bodi Police Station. On the same day at about 11.00 am, he went to the Bodi Police Station and approached A1 namely Pandi, who was working as Head Constable. At that time, A1 demanded Rs.2,000/-, which was liable to be paid by him to his brother-in-law. Since, PW2 obtained loan of Rs.2,000/- from the brother-in-law of A1. He stated that he will pay the money after some-time. But he insisted payment of the above said money, otherwise, he will not make any recommendation for the gun licence. He consulted the above said issue with his friends and they advised to lodge a complaint before the Vigilance Department, so that recommendation may be made by the police officials. On the basis of the above said recommendation, he lodged a complaint with PW9, when he was working as Inspector of Police, Vigilance Department in Madurai. On 22/09/2006, he received the complaint from PW2 at about 09.00 am and made secrete enquiry. On the basis of the complaint, he registered a case in Crime No.16 of 2006 for the offence punishable under section 7 of the Prevention of Corruption Act, 1988. He submitted the original to the concerned court and the copies to the higher officials as per the procedure. He made pre-trap arrangement and he requested the Government Department to depute two responsible persons to assist the pre-trap process.

6.In response to his request, one Rajaram and Santhanakrishnan attended the office at about 10.30 am. He introduced PW2 to the above said witnesses and conducted demo with sodium carbonate solution. At that time, PW2 handed over Rs.2,500/- consisting Rs.500/- notes to him. He instructed PW2 and other witnesses to follow his instructions. He instructed PW2 to give Rs.2,500/- to the accused if any demand is made and after he accepted the same, he must give a signal. With the above said instructions, they prepared a mahazar narrating all the events that took place during the pre-trap arrangement. He also mentioned the currency note numbers in the mahazar. The currency notes smeared with phenolphthalein power. The above said money was handed over to PW2 with the above said instructions. They started from the office at 03.00 pm and reached the office of the accused at about 05.15 pm. PW2 and PW3 went to the police station by PW2's vehicle and the police team followed them and the police team after reaching the police station, hiding in a nearby place. At about 06.20 pm, they entered into the office of the accused.

7.The further event is spoken by PW3, since PW2 turned hostile. We need not discuss the further event through PW2. He was standing near the doors of the accused office. PW2 went inside the room and made an enquiry with regard to the gun licence. At that time, A1 stated him that licence is ready, whether he brought the money. He informed A2 to come to the office. PW2 handed over Rs.2,500/- to A1. Out of the above said money, A1 asked PW2 to give Rs.500/- out of Rs.2,500/- to A2, so A2 also received the above Rs.500/- from him. As instructed by the police officials, both of them came out of the office and made a signal as instructed earlier.

8.The further event is spoken by PW9. On getting signal from PW2, they went inside the office of the accused. The accused was identified by PW2. He requested the Sub Inspector of Police namely Magathy to be a witness to the above said enquiry and proceedings. Sodium carbonate solution was prepared and the accused was required to dip his right finger in the above said solution it turned pink. It was collected in a container, labeled and sealed. Similarly that was also dipped for left hand also with another sodium carbonate solution, it also turn pink and that was also collected in another container labeled, sealed. On enquiry, A1 admitted that he received the above said bribe amount for sending recommendation. He handed over Rs.2,000/-, which was received by A1 from PW2. He compared the same with that of the notes mentioned in the mahazar. It tallied. Later, another sodium carbonate solution was prepared and the accused left shirt pocket it was collected and labelled and sealed. Similarly, the above said process was undertaken in respect of A2 also and in both testes, sodium carbonate solution turn pink. Both collected in a separate container, labelled and sealed.

9.On enquiry, A2 was also admitted that he received Rs.500/- from PW2. He compared the currency notes with that of the notes noted in the mahazar. They found to be tallied. So after usual procedure, as per the rules, he recovered the relevant documents from the office of the accused. He prepared the mahazar for the above said, for which the official witnesses and others signed. The accused were arrested and they were released on bail.

10.Further investigation was undertaken by PW10, who was working as Inspector of Police in Madurai Vigilance Department. He recorded the statement of the witnesses and sent the sodium carbonate solution for chemical examination through the trial court. After completing the formalities of investigation, after getting the sanction order, on 07/07/2008, he filed charge sheet against the accused for the offences as stated above.

11.PW4 is stated to be the friend of PW2. He alleged to have accompanied PW2 to Bodi Police Station, on 11/09/2006 when A1 demanded Rs.2,500/- as bribe amount. But he turned hostile and disowned the statement before the Investigating Officer and etc., facts of accompanying PW2 to Bodi Police Station.

12.PW5 was working as Inspector of Police Bodi Town Police Station during the relevant time. He has spoken about receiving of gun licence request, which was entered in the relevant register in 174/GO/B/06 to the reference to the request made by PW2.

13.PW7 was the Scientific Assistant, who examined the sodium carbonate solution sent for chemical examination and file a report.

14.PW9 was the Village Administrative Officer in Kodivelli village, Bodi Taluk at the relevant of time. He has stated that one Periyasamy approached him for issuing adangal and chitta in respect of the properties situated in Survey No.595 in Kottakudi village. He also issued nativity certificate for the above said Periasamy.

15.So with the above said evidence, the prosecution side witness was over and the accused was put to section 313 Cr.P.C examination and he denied the facts that were narrated by the prosecution.

16.On the side of the accused, one Thennarasi was examined as DW1. He is the brother-in-law of A1. PW2 was known to him and PW2's sister was married to one Murugan, who belongs to their village. The above said Murugan is also related to him. Because of the above said contact, PW2 obtained Rs.2,500/- as hand loan in 2005 June. Even though, he promised to return the amount within 10 days, it was not done. So he informed A1 to receive the money from PW2.

17.At the conclusion of the trial, the trial court found that the charges against both the accused were not proved beyond all reasonable doubt and accordingly, the trial court acquitted both the accused from the charges levelled against them. Aggrieved over the above said acquittal, the State has preferred this appeal against both the accused.

18.Heard both sides.

19.It is a case of acquittal.

20.**The background facts**:-

It is not denied that PW2 made an application for gun licence. The competent authority is the District Collector, who delegated it to DRO. Originally, his application was rejected in 2006. Later, he renewed the application and process was undertaken. It was forwarded to the jurisdictional police station for verification. Now the verification was undertaken by A1, who was working as Head Constable in the concerned police station during the relevant time and A2 is the Police Constable. The competent authority to send the report is the Inspector of Police. However, it was again, delegated to A1 for the purpose of making verification. At this juncture, it is the case of the prosecution that A1 demanded Rs.2,500/- as illegal gratification.

21.Now receiving of the money is not disputed by A1. A defence has been taken, of course, belatedly to the effect that the money, which was received by him was meant to be handed over to his brother-in-law and from whom, PW2 alleged to have obtained a hand loan. So A1 has made a plea that it is a probable defence, which is also supported by the evidence. So presumption under section 20 of the Prevention of Corruption Act has been successfully rebutted by him and so, the order of acquittal that was passed by the trial court requires no interference.

22.So a short point, which arises for consideration is whether the money that was received by A1 and shared with A2 was meant for illegal gratification or for handing over the same to A1's brother-in-law.

23.Before we go into the prosecution case, let us see whether the transaction alleged between PW2 and the brother-in-law of A1, DW1 is true. The above said plea has been taken, as mentioned earlier, belatedly and PW2 was examined in chief. It was not the plea of the accused, either during the course of investigation or at the time of framing charges.

24.PW2 would say that his sister was married in Devaram and A1 was also married in that village. One Thennarasu is the brother-in-law of A1. From the evidence of the above said Thennarasu, PW2 obtained a loan amount of Rs.2,500/-. At that time, A1 to return loan amount to be paid by his brother-in- law and he was threatened that if the amount is not returned, a false case will be foisted. Returning back promising that he will return the money in two or three days, now he would say that because of the above said insult, he was mentally depressed, over which only, he lodged the complaint. He completely disowned the contents of the complaint, that was given by him and he was treated hostile by the prosecution. He also disowned the statement that was given during the course of investigation.

25.Reading of his evidence in comparison with that of the contents of the complaint shows that he is not a reliable person.

26.The learned Additional Public Prosecutor would rely upon the contents of the complaint as well as the participation of PW2 in the pre-trap and trap arrangement. He would rely upon the admission that was made by PW2 to the effect that with full possession of mind, he gave the complaint to the Inspector.

27.By pointing out this portion of the evidence, it is contended that the alleged complaint itself has been proved and in the further cross examination, he admitted the prosecution case stating that he gave the statement as mentioned in the complaint. The accused demanded Rs.5,000/- as bribe amount. Later, it was reduced to Rs.2,500/- and non-availability of the Inspector during the course of his visit and demand of Rs.2,500/- by A1. So reading of the further cross examination that was made by the prosecution shows that before that he changed his mind and wanted to support the case of the prosecution.

28.For better appreciation, let me give the dates of his examination. He was examined first, on 19/01/2010 in chief and cross examined by the prosecution. At that time, he turned hostile. Later, he was recalled at the instance of the prosecution, on 13/06/2016. At that time, he wanted to support the prosecution. There is a change in the mind of PW2. Again, he was recalled at the instance of the accused, on 03/10/2016. Now he wanted to again support the defence version. So the question, which arises for consideration is whether such a person can be relied and that too in case of illegal demand and acceptance of bribe amount by the public servant.

29.It is very unfortunate that the courts have to deal with such sort of persons. Now it is well settled that in the absence of primary evidence of the complainant or neither supporting the case of the prosecution, nor available for examination, circumstantial evidence can be taken into account for deciding the issue.

30.Now let us completely ignore the evidence of PW2. When we ignore the evidence of PW2, the initial demand also goes. The prosecution should not establish the initial demand by relying upon the complaint. Because the contents of the complaint is not the substantial piece of evidence. More-over, as mentioned earlier, PW2 was going on changing his mind. It shows that he is not a stable minded person. So it is too weak to rely upon his evidence, either for prosecution or defence. When the initial demand goes, the evidence of PW3 is available with regard to the demand and acceptance alleged to have been made by the first accused at the time of trap.

31.PW3 would say that as per the instructions given by the Inspector of Police during the course of pre-trap arrangement, along with PW2, they went to Bodi police station at about 06.00 pm. At that time, A1 was available in that office and he was standing outside the room. PW2 went inside the room of A1 and enquired A1 about the gun licence. A1 alleged to have stated that every thing is made ready, enquired about the money. A1 requested the cell phone of PW2. Through the above said cell phone, he called PW2 and asked him to come with Rs.2,500/-. Out of the above said amount, he retained Rs.2,000/- for him and handed over Rs.500/- to PW2 and asked him to give it to A2. That money was given to A2. So this is the event spoken by PW3.

32.By pointing out this piece of evidence, the learned Additional Public Prosecutor would submit that the demand and acceptance on the date of the trap itself is also established by the prosecution.

33.Now the question, which arises for consideration is whether his evidence can be taken into account to upset the order of acquittal passed by the trial court.

34.One important fact that was spoken by PW3 is that when the conversion took place between A1 and PW2, he was standing outside the room of A1. Why he was standing outside the room, when specific instruction was given to him to accompany PW2 at that time of demand and acceptance, not explained. So how he was able to hear the conversion between PW2 and A1 could not been ascertained. At this juncture, as pointed out by the learned counsel appearing for the by the accused, rough sketch showing the place of occurrence assumes importance.

35.Now we will see whether such document is available. It has to be prepared by the Investigating Officer. Ex.P16 is the topography sketch. The asterisk portion has shown the place of occurrence and door side. Where PW3 was standing is not mentioned in the rough sketch. Whether, it was within the hearing distance is also not clear on record. So his evidence also now may not be completely reliable with regard to the demand.

36.Now let us go to the aspect of receiving the money. Again, we have to rely upon the evidence of PW3 for this purpose.

37.At this juncture, one important aspect was brought to the notice of this court by the accused. According to the prosecution case, PW2 lodged a complaint with PW9, on 22/09/2006 at about 9.00 am. Immediately trap arrangement was made and at the request made by him with the Government Department to depute two responsible persons for assisting the prosecution, one Rajaram and and another one Santhakumar attended the office at about 10.30 am in the police station. PW2 also would say that on the date of the complaint itself, trap arrangement was made and one Rajaram and Santhakumar, at the request made by PW9, attended the office and further pre-trap arrangement was made.

38.PW2 admitted that he attended the office of the Vigilance Department, on 22/09/2006 in the morning. But however, on the previous day evening itself at about 06.00 pm, the Manager of his office, asked him to attend the Vigilance Department office; he made enquiry as to the reason and it was replied that he must attend the Vigilance Office on that date. But no written communication or order was given to him by the Manager.

39.This important aspect was relied upon by the trial court also to doubt the very trap arrangement itself and the time of lodging the complaint. When the prosecution relied the evidence of PW3 for demand and acceptance of money on the date of trap itself, proper explanation must be offered by the prosecution on this important aspect also.

40.Had it been received on the date, which is mentioned in the complaint, absolutely, there was no possibility for PW9 to invite the Government to depute the officials on the next day. So this created doubt in the mind of the court with regard to the initiation of the complaint and follow up proceedings.

41.So with this, we will go the next aspect of the sodium carbonate test. It turned pink, when A1 dipped his both hands, but no colour was changed, when A2 dipped his left hand. But during the cross examination, he has stated that when A2 dipped his hands in the sodium carbonate solution, both solution turned pink. So it is nothing, but a contradiction. So doubted that A1 received the tainted money, which was treated with phenolphthalein power. So it turned pink. But what was the role by the A2 is not clear on record. Only at the instance of A1, PW2 alleged to have handed over Rs.500/- to A2.It is not the case of the prosecution that it was found during the course of investigation, A2 also involved in the above said demand and acceptance of illegal gratification. So the involvement of A2 is also doubtful.

42.Another factor that was projected by the accused is that PW3 was very clear in his evidence that one DSP was also coming along with PW9 Inspector during the trap event. But PW9 has stated that the above said DSP did not accompany her. What happened to the Chellan Pandian is not clear on record and why the presence of Chellan Pandi has not been spoken by PW9 is also not clear on record. He was not also examined as a witness on the side of the prosecution, either to support the case of PW3 or to deny. So not only the initiation of the complaint, but also trap itself is clouded in mystery. At this juncture, simply because the sodium carbonate solution turned pink, when A1 dipped by both his hands will not lead to inference that A1 received the bribe amount from PW2 and in turn shared the same with A2.

43.Why the prosecution tried to suppress the important fact has not been clearly brought on record. When trap arrangement is made, it must be clear and should not be tainted with mystery, doubts, creation of evidence, etc. Creating circumstances person is not less serious issue, than that of the illegal gratification, demand and acceptance of illegal gratification by the public servant. The prosecution has to come out with the clear hands, then only the public servants who are receiving bribe amount can be convicted. But here, the prosecution suffers from the above said defects, which cannot be cured by any stretch of explanation. On the very same thing, even though without referring to the judgment cited by either to support or reject the contention, I find that the prosecution appeal has to fail. Since as already stated that PW2 cannot be a reliable persons for any purpose, either in support of the prosecution or in support of the accused, the evidence of DW1 Thennarasu, who is the brother of A1 need not be taken into account at all, since he happens to be the brother-in-law of A1. Naturally, he would have intended or interested in seeing the acquittal. So his evidence is also not required for any purpose. On that sole ground, the appeal fails and the same is liable to be dismissed.

44.In the result, this criminal appeal fails and the same is **dismissed**, confirming the acquittal order passed by the trial court.

28/02/2023

Index:Yes/No
Internet:Yes/No
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To,

1.The Chief Judicial Magistrate-
cum-Special Court for Trial of
cases under the Prevention of Corruption
Act cases, Theni.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Theni.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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Crl.A(MD)No.210 of 2017

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