BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.347 of 2017

State represented by
The Public Prosecutor,
High Court, Madras-104
(V & AC, Tirunelveli)
Crime No.20 of 2003) : Appellant/Complainant

Vs.

C.Sankarasubramaian : Respondent/Accused

Prayer: Criminal Appeal is filed under section 378(1) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused in Special Case No.9 of 2014, dated 11/11/2016 by the Special Court for Trial of cases under the Prevention of Corruption Act, Tirunelveli and convict the respondent/accused for the charges framed against him.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondent : Mr.R.Anand

J U D G M E N T

This Criminal Appeal is preferred against the judgment of acquittal passed against the respondent/accused in Special Case No.9 of 2014, dated 11/11/2016, by the Special Court for Trial of cases under the Prevention of Corruption Act, Tirunelveli and convict the respondent/accused.

2.***The case of the prosecution, as narrated through the prosecution witnesses***:-

PW2 is living in Pattapathu, Tirunelveli Town. He purchased the house bearing Door No.35 in the above said street in his wife's name. In 2003, he approached the accused, who was working as Bill Collector in that area for assessment of house tax, etc. He purchased the application and also remitted the fee. He handed over the above said application to the accused. He made initials in a red ink pen and put his seal also. After obtaining the above said signature and seal, he put up the application in the box. When he contacted the accused, he was told that the Revenue Inspector has to inspect the property and then only assessment can be made. On

22/12/2013, at about 01.30 pm, he again contacted the accused. At that time, he demanded Rs.1,000/- as bribe. At his request, it was reduced to Rs.700/-. The accused asked him to come, on 24/12/2013 between 01.00 pm and 01.30 pm and hand over the money. He did not intend to give bribe. So contacted the respondent namely Vigilance and Anti Corruption Department, on 24/12/2013 at about 9.30 am. His statement was recorded by the Inspector and in the complaint, he signed.

3.The further event is spoken by the Inspector of Police, attached to Vigilance Department namely PW11. He would say that he received the complaint from PW2, on 24/12/2003 at about 9.30 am and registered a case in Crime No.20 of 2003 for the offence under section 7 of the Prevention of the Corruption Act. He sent the printed FIR along with the original to the concerned court and the copies were submitted to the higher authorities as per the procedure.

4.On the basis of the above said complaint, pre-trap arrangement was made as per the procedure. He requested the assistance of the Government officials for the trap arrangement. At his request, one S.Palanisamy belongs to the Tamil Nadu Electricity Board and one Baskar belongs to the Municipal Corporation were deputed at about 12.00 am. He introduced the above said witnesses to PW2 and conducted a demo with sodium carbonate solution and he has also explained about the above said test.

5.PW2 handed over Rs.700/- demanded by the accused as bribe and that was smeared with phenolphthalein power with the note numbers mentioned in the Mahazar. The Mahazar was prepared, setting out the above said event, which was undertaken during the trap arrangement. In the mahazar, all the witnesses signed. He instructed PW2 and the shadow witnesses to come to the office of the accused. After the amount is demanded as bribe, he must hand over the same. After handing over the same, he must give signal. With the above said instructions, all the persons started towards the accused office at about 12.45 pm. They went to the office of the accused, which situated near Ganesh Theatre at about 01.10 pm. Witness Nos.2 and 3 went inside the office of the accused.

6.Further event is spoken by PW2. He has narrated the sequence of events. He would say that as per the instruction given by PW11, he along with PW3 went inside the office of the accused. At that time, the accused asked him, whether he brought Rs.700/-, which was demanded by him. He handed over the above said Rs.700/-. The accused accepted, counted the same, put it in his left shirt pocket. After the above said process, the accused stated that process will be completed within two days. After the above said events, he along with PW3 came outside the office and made signal as advised earlier.

7.The further event is spoken by PW11, the trap laying officer. He would say that as instructed PW2 and the shadow witness Palanisamy came out of the office of the accused at about 01.20 pm and made signal and the police party entered the office. The accused was identified by PW2. The sodium carbonate solution was prepared and the accused was asked to dip his both hands. Both hands turned pink. Both solution were collected in a separate container, labeled and sealed. He made enquiry with regard to the money that was demanded and accepted by him. He collected the money, which was put in the shirt pocket, counted the same and compared with that of the currency note numbers mentioned at the time of pre-trap arrangement were found to be tallied. Sodium carbonate solution test was conducted and the sample was taken in another container, labelled and sealed. Money was recovered. Relevant documents were seized. He obtained the signature of the witnesses and the accused in the above said mahazar. In spite of search and seizure made in the house of the accused, no recovery or seizure was made.

8.PW14 was working as Deputy Superintendent of Police during the relevant point of time. He took up the further investigation and recorded the statement of the witnesses, took up steps to send the material objects for chemical examination, received the chemical report from the Forensic Science Lab, Chennai, obtained sanction order against the accused. After completing the formalities of investigation, filed charge sheet for the offences punishable under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

9.PW3 is the shadow witness. Also corroborated the evidence of PW2 and PW11 in the pre-trap arrangement and trap arrangement in material particulars. He also signed in the relevant records.

10.PW4 was working as Assistant Commissioner during the relevant period. He has spoken about the steps and action undertaken by the accused, over the request made by PW2.

11.PW5 was working as Clerk in the Tirunellveli Corporation office. He has spoken about the transfer of file regarding the request made by PW2.

12.PW6 and PW7 and PW8 also spoken about the transfer of file.

13.PW9 is not a material witness and spoken only about the duty that was assigned to the accused.

14.PW10 is also not a material witness, so also PW12.

15.PW13 was working as Scientific Assistant in the Forensic Science Lab, attached to Chennai and spoken about the test, that was undertaken on the material objects submitted by the police through court.

16.After examination of the prosecution side evidence was over, the accused was subjected to section 313 Cr.P.C. Examination, he denied the facts stated by the prosecution.

17.At the conclusion of the trial process, the trial court found the accused not guilty and acquitted him from the charges levelled against him.

18.Challenging the above said acquittal, the State is before this court by way of this appeal.

19.Heard both sides.

20.Since it is a case of acquittal to know about the ground, on which the acquittal has been made can be taken up for consideration first.

21.Before we go into the aspect, the background facts are necessary for better appreciation.

22.It is not in dispute that the accused was working as Bill Collector during the relevant time for 44th Ward in Tirunelveli Corporation. PW2 purchased a property in Door No.35 in Ottakuthar Street, Pattapathu in the name of his wife. For change of assessment namely the house tax assessment, he made a request and that was originally received by PW7. PW5 in-turn transferred to PW7 and later to PW6 for further process to PW8. We need not concentrate much upon the transfer of files in the official process, which was undertaken, since it is not denied that the accused is the competent person to collect the taxes and recommend for transfer of assessment etc.

23.Now the case of the prosecution is that by misusing the official power, he demanded money and accepted the same as illegal gratification. The request was made in 2003. After presentation of the petition on 15/12/2003, he enquired the accused on two times, at that time, there was no demand. He was informed that the

Revenue Inspector will inspect the property and then only, the assessment order will be passed for change. On 22/12/2003, he demanded Rs.1,000/-, that was reduced to Rs.700/- and he was directed to give the money on 24/12/2003. So on that date, he lodged a complaint, upon which the pre-trap arrangement and trap arrangement were made. So we can believe the prosecution story regarding the lodging of the complaint and pre-trap arrangement. But regarding trap only, doubts have been created in the mind of the trial court by the defence, which was the primary reason for the acquittal. So without going into the other aspects, now let us straightaway concentrate, the place of occurrence.

24.The learned Additional Public Prosecutor would make a strong objection to the effect that when the acceptance of money was admitted by the accused, the question of creating doubt with regard to the place of occurrence will not assume importance at all. But I am unable to agree with this line of argument.

25.In vigilance matters, not only the initiation of complaint, but also each and every step in the investigation must be cleared from any doubt. Prosecution should not try to create evidence or circumstance for the purpose of seeing that conviction is rendered. If such sort of misdeed on the part of the prosecution is allowed, then as mentioned in some cases, it is not less serious, than that of the demanding gratification and acceptance. This is the cardinal principle with regard to not only the prosecution by the Vigilance Department, but also the prosecution in all criminal cases.

26.So with this in mind, this court reject the argument that was made by the learned Additional Public Prosecutor/State.

27.Now let us come to the point. Totally, three units are functioning in Tirunelveli Town relating to collection of taxes. Unit No.1 is located near Town Police Station, Tirunelveli. 2nd Unit, which is the jurisdiction office of the present subject matter is located in Katchi Mandapum. The 3rd is located near Meenakshi Theatre, Pettai. It is admitted by the prosecution and the accused.

28.Now at this juncture, the accused established an important fact that the place of occurrence has been shifted by the prosecution.

29.Now let us go to the above said fact, which have brought on record.

30.All the prosecution witnesses including the trap laying officer would say that they started from the office and all the witnesses were dropped near Ganesh Theatre, which is nearer to the Unit No.2. So this is the evidence of PW2.

31.PW3 shadow witness would say and also admit that they were dropped near Ganesh Theatre, asked to go to the office of the accused.

32.PW9 trap laying officer would also admit that at about 01.00 pm, they reached Ganesh Theatre and dropped PW2 and PW3 to go to the office of the accused for further events.

33.At this juncture, it is the argument of the accused that Ganesh Theatre is not nearer to Unit No.2 office and the distance between two places is more than one kilometer; There is no possibility of any one to see the event took place in Unit No.2 from the Ganesh Theatre area.

34.PW2 would say that Unit No.2 is located on the Tenkasi Road, near Ganesh Theatre, there is no corporation unit. Between Ganesh Theatre and Katchi Mandapum, the distance is about one kilometer. In Unit No.2 area, a library, Anganvadi school and noon meals organization and kitchan are located, in the very same premises.

35.PW3 would also admit that Katchi Mandapum is located on the Tirunelveli Road and that was located some half kilometer away from the area, where they were dropped and from that place, the Katchi Mandapum will not be visible.

36.PW6 would say that Unit No.2, where the accused was working is located on Tenkasi Road nearer to the

Ganesh theatre. No unit was functioning. From Ganesh Theatre, Unit No.2 is not visible.

37.PW8 would also admit that the distance between Ganesh theatre and Unit No.2 was about one kilometer. From Ganesh Theatre, Unit No.2 is not visible.

38.PW9 would also admit that nearer to Ganesh Theatre, no corporation unit was functioning.

39.So from these evidence, it is seen that nearer to the Ganesh Theatre, the trap laying officer, PW2 and PW3 were dropped, now it has been clearly established by the defence. Now how the change has occurred is the only point for consideration.

40.To clarify this doubt, we will go the evidence of trap laying officer. In the conclusion, PW9 stated that PW2 and PW3 went to the Corporation Office, which is located some 100 meters from Ganesh theatre; They are hiding near the above said place; They never went to Ward No.44, office located in Sivaprakasham Street; He was certain to the effect that PW2 and PW3 went to Ward No.44

Office on the date of trap. He would further say that PW2 and PW3 only went to Unit No.2. But whether Unit No.2 was located near Katchi Mandapum, Tenkasi Road could not be remembered by him. But in Mahazar under Ex.P9, he has stated that it was prepared in Unit No.2 nearer to Venu Vanakumara temple. The above said temple is located near Katchi Mandapum.

41.So with these evidence, now let us go to the documents.

42.In the complaint, it has been stated by PW2 that demand was made, when the accused was available in 44th Ward, which is located in Sivaprakasham Street.

43.In Ex.P9, as mentioned above, it has been stated that all the persons were dropped near Ganesh Theatre and the police team was hiding nearby. PW2 and PW3 went to the office of the accused.

44.Ex.P22 is the rough sketch, wherein we find that the place of occurrence is noted as located on the Venu Vanakumara Koil street on the Tirunelveli to

Cheranmahadevi road. In the above said premises, library, noon meals centre and kitchen were available. So this clearly contradicts the evidence of PW2, PW3 and PW9. So where was the trap laid, conducted and documents prepared, serious doubt arises as pointed by the trial court.

45.Even though, there is a clear admission on the part of the accused that he received the money from PW2, but would contend that it was meant for only collection of flag day contribution. But the fact remains that the duty was not assigned to him. The changing of the place of the occurrence, as mentioned above, cannot be appreciated. On the sole ground, I find that there is no reason to interfere in the judgment of acquittal, that has been passed by the trial court.

46.For the reasons stated above, this court is of the considered view that the judgment of acquittal passed by the trial court requires no interference by this court.

47.In the result, this criminal appeal fails and the same is **dismissed.**

03/03/2023

Index:Yes/No
Internet:Yes/No

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To,

1.The Special Court for trial of cases under the Prevention of Corruption Act, Tirunelveli.

2.The Additional Public Prosecutor, Madurai Bench of Madras High court, Madurai.

G.ILANGOVAN, J

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