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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of reservation	10/11/2022
Date of pronouncement	25/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.84 of 2017

Jesu : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Vigilance and Anti Corruption,
Virudhunagar.
(In Crime No.05 of 2008) : Respondent/Complainant

Prayer: Criminal Appeal is filed under section 374(2)of the Criminal Procedure Code, to call for the records of the judgment, dated 21/02/2017 in Special CC No.8 of 2014 on the file of the Special Court for cases for Anti-Corruption cases-cum-Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur and set aside the same.

For Appellant : Mr.G.Bhagavath Singh

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

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J U D G M E N T

This Criminal Appeal is preferred against judgment, dated 21/02/2017 passed in Special CC No.8 of 2014 by the Special Court for cases for Anti-Corruption cases-cum-Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

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

PW2 is the brother of PW4. He took PW4 to Thiruthangal Town Panchayat office for transfer of house tax assessment in her name. The above said application was made, on 01/07/2008. It was handed over to the Executive Officer namely Ganesan and in-turn, the application was forwarded to the accused, who was working as Clerk. The accused advised them to bring all the documents. As instructed by her, PW2 followed the above said request. Now PW2 would say that, on 07/07/2008, he handed over all the documents to the accused and she told him that for each transfer of assessment, Rs.100/- has to be paid. That apart, he must be given Rs.400/- as bribe. He returned to the house and again went to the office, on

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17/07/2008. Again, she made the above said demand. She informed PW4 over the above said demand. But they did not intend to give the bribe. So, he along with PW4 lodged a complaint, on 18/07/2008 with the Vigilance Department, Virudhunagar.

3.The further event is spoken by PW11, who was working as Inspector of Police during the relevant time. He received the complaint from PW2 and registered a case in Crime No.5 of 2008 for the offence under section 7 of the Prevention of Corruption Act. The original FIR was submitted before the concerned court and the copies to the concerned higher officials as per the procedure. He made pre-trap arrangement by making request to the Government Department to depute two responsible officials for arranging trap process. In pursuance of the above said request, one Thangamuthu and Elangovan attended the office. He introduced the above said witnesses to PW2 and made a demo by following the procedure. He also handed over Rs.600/- to him. Out of the above said amount of Rs. 600/-, Rs.200/- is meant for charges and Rs.400/- is bribe amount, which was demanded by the accused. It was smeared with phenolphthalein powder. Sodium carbonate

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solution demo was also undertaken. He told the importance of the above said demo to the witnesses. He prepared a mahazar mentioning the currency note numbers, in which all the witnesses singed. He instructed them to follow his instructions and hand over the money to the accused, when demanded. With the above said process, all of them started towards the office of the accused, at about 12.30 pm reached the accused office at about 01.15 pm. The police team was hiding in a nearby area and PW2 and other witnesses were instructed to follow the instructions.

4.The subsequent event is spoken by PW2. He would say that he went to the office of the accused and waiting for 20 minutes. Later, the accused came and enquired him about the request. He enquired whether he has brought the charge and bribe amount. In pursuance of the above said demand, he gave the above said bribe amount of Rs.400/- and the charge amount of Rs.200/- separately. He accepted the same, counted and put the same in the bureau beneath a register. As instructed by PW11, he along with PW4 came out of the office and made a signal as instructed earlier. On seeing the signal, PW12 along with the police team went inside the office of the accused. PW2

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identified the accused and he advised PW2 to go out of the office and prepared the sodium carbonate solution. The accused was instructed to wash his hands. It turned pink. On enquiry, the accused handed over Rs.600/- notes. He compared the same with that of the note mentioned in the mahazar, which was prepared at the time of trap and it was found to be tallied. He seized the relevant register and records from the office and the entire events reduced into writing in the form of mahazar, in which, all the witnesses have signed. Search was made in the house of the accused, but no incriminating documents have been recovered or seized and the accused was arrested and remanded to custody.

5.The further investigation was undertaken by PW12, who was working as Inspector of Police during relevant time. He recorded the statement of the witnesses on various dates. After getting the sanction order, he filed a final report charge sheeting the accused for the offences punishable under sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

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6.PW3 was the shadow witness, who accompanied PW2 during the trap process and also took part in the pre-trap arrangement. He corroborated PW11 with regard to material particulars of pre-trap arrangement and actual trap, etc. He also signed in all the documents.

7.PW4, as stated above, is the owner of the property and for her only, the above said assessment process was requested. PW5 has spoken about the duty of the accused, request that was made by PW4 for changing the assessment and the relevant proceedings.

8.PW6 was working as Health Inspector in Thiruthangal Town Panchayat. He has spoken about the event that took place during trap process.

9.PW7 was also working as Sanitary Inspector and he spoken about the trap events, so also PW8 and PW9.

10.PW10 was the Scientific Assistant, who examined the material objects, that were submitted through the concerned court. With that, the prosecution side evidence was closed.

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11.The accused was put to section 313 Cr.P.C proceedings. She denied the truth of the facts deposed by the prosecution witnesses. On her side, none was examined.

12.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced to undergo **6 months rigorous imprisonment** and imposed a fine of 2,000/- with default clause for the offence under section 7 of Prevention of Corruption Act, 1988 and to undergo **1 year rigorous imprisonment** and imposed a fine of Rs.5,000/- with default clause for the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Aggrieved over the same, this criminal appeal has been preferred.

13.Heard both sides.

14.Before we go into the disputed facts, let us bear in mine the factual circumstances as well as the admitted facts.

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15.It is not disputed that the appellant was working as Junior Assistant Grade II in the Thiruthangal Municipality. PW4 is the owner of the property, in respect of which, she made a request to change the house tax assessment in respect of the property, that was settled by her father bearing No.229. So on the basis of the above said settlement deed, she made the above said request, on 01/07/2018 with Thirthangal Municipal Corporation. It was presented to the Executive Officer namely Ganesan along with PW2. The said Ganesan has been examined on the side of the prosecution as PW5. PW5 in-turn handed over the above said request to the Clerk namely Jeshu, who is the accused herein. The above said request was marked as Ex.P2. Later, the above said process was followed by PW2 namely Ayyanar, who is the uncle of PW4.

16.Now let us go to the evidence of PW5. On 07/07/2008, the assessment was transferred in the name of PW4 and he has also made relevant order and entries were also made in the relevant register. The charges were remitted, on 07/07/2008 in the name of PW4. That amount was remitted to the Government account, on 08/07/2008.

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Later, he came to know that the above said Rs.200/- towards the charge, were remitted by the accused himself on behalf of PW4. So from the sequence of events, as spoken by PW5, it is seen that the order of change of assessment was made as early as on 07/07/2008 itself.

17.In the above said background, let us go back to the evidence of PW2. On 07/07/2008, he met the accused in his office and also handed over all the relevant documents, which are required. At that time, he demanded Rs.400/- as bribe amount. Apart from that, he advised him to remit Rs.200/- towards the charges for transfer of assessment order.

18.As mentioned earlier, on 07/07/2008 itself, the transfer of assessment order was made by PW5. At that time, whether, it was informed to PW2, though the assessment order has been made is not clear on record. But PW2 has stated that money was demanded and so again, he met him, on 07/07/2008. At that time, he demanded Rs. 400/- for transferring the assessment. Later, he made a complaint, on 18/07/2008.

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19.At this juncture, it was contended on behalf of the appellant to the effect that the appellant is not a competent person to make the transfer of assessment and so, there was no occasion for him to demand the bribe amount; and apart from that, the order was passed, on 07/07/2008 itself. So there was no occasion for him to demand the bribe amount, on 07/07/2008 and repeating the same, on 17/07/2008.

20.But from the evidence of PW5, it is seen that the transfer order was handed over to PW4, on 18/07/2008. The date, on which the above said trap was laid. Till 18/07/2008, the assessment order was not handed over to PW4 and it has been kept in the custody. PW5 is not able to give any explanation as to why the above said order was not handed over to PW4, either on 07/07/2008 or between 07/07/2008 and 18/07/2008. So even though, it has been contended on behalf of the appellant that because of the above said two circumstances, absolutely there was no occasion for him to demand the bribe amount. I absolutely find no reason to disbelieve the evidence of PW2. No motive also existed between them. Even though, a weak motive has been suggested to PW2 that because of removal

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of the encroachment issue, motive existed between them, but was not supported by any circumstantial evidence. It was suggested to PW2 and PW4. So it is seen that it is a clear after thought on the part of the appellant to suggest and invent the motive. PW2 has stated that only after the complaint, the above said removal process was undertaken.

21.In the light of the above said development, let us go back to the charges. The trial court as well as the Investigating Officer were sufficiently conscious to the above said development and a specific charge has been made to the effect that only for the purpose of handing over the assessment order, bribe was made. But PW2 was not aware of the transfer of the assessment, on 07/07/2008 itself. Had it been informed to him, he would have immediately contacted PW5. By suppressing the fact of transfer of the patta assessment by Ganesan, it appears that the appellant played game over PW2. The appellant cannot take advantage of his own wrong and say that there was no occasion for him to demand the bribe.

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22.No doubt that PW2 in the complaint has stated that only for the purpose of handing over the assessment order, the accused demanded the bribe amount, on 07/07/2008. But in the evidence, he has stated that he made enquiry, on 07/07/2008 with regard to the transfer of assessment order. At that time, the accused stated that only after payment of Rs.400/- as bribe amount and remittance of Rs.200/- towards charges, assessment can be made. So there is some discrepancy with regard to the evidence and the complaint. But that need not be taken into account, because of the subsequent developments.

23.Now let us go to another circumstance. Neither PW2, nor PW4 paid the required amount of Rs.200/- to the accused. Who is responsible person for collecting the amount was not properly explained. But contra, it was remitted by the accused himself on behalf of PW4. Why he has taken such an interest was not properly explained by him. It is not the duty of the appellant also to remit the required fee on behalf of the assessee. This circumstance also clearly stands against the appellant.

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24.The evidence of PW2 with regard to demand of bribe is also supported by the evidence of PW4. He has stated that PW2 informed her regarding the demand of bribe amount. Nothing is available on record to discard the evidence of PW4 on this account.

25.Now let us go the argument advanced on behalf of the appellant. It was contended on behalf of the appellant that the above said transfer assessment order was in the hands of PW5 till 18/07/2008. So according to him, the charge to the effect that he demanded money for handing over the transfer order itself has not been proved in the light of the evidence of PW2. So according to him, PW2 has not stated anything for the purpose of handing over the transfer order, bribe was demanded. So as mentioned earlier, the above said transfer order was exclusively within the knowledge of PW5 and the accused. That was not intimated to PW4. So the contention on behalf of the appellant that the charge itself is not established in view of the evidence of PW2 and PW4 cannot be accepted for the simple reason that it is the deliberate act on the part of the appellant in not informing PW2 about the transfer order. So as mentioned

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earlier, he cannot take advantage on his own wrong. But the circumstance clearly shows that by suppressing the fact only, he demanded money on 07/07/2008 and 17/07/2008. I absolutely find no reason to disbelieve the evidence of PW2 and PW4 with regard to demand on 07/07/2008 and 17/07/2007.

26.Now the next issue comes to the pre-trap arrangement. Argument has been advanced on behalf of the appellant to the effect that absolutely, there is no possibility for o PW11, the trap laying officer to receive the complaint, on 18/07/2008 at about 10.00 am, because it is the evidence of PW11 and PW2 that at about 10.00 am, PW2 handed over the complaint, that was received by him and requested to depute two responsible officers for arranging trap immediately within 15 minutes.

27.Now let us go to the evidence of PW11 on this aspect. He has stated that at 10.30 am, he made the above said request and the witnesses turned up to the office at 10.45 am. PW3, who is the shadow witness would say that at about 10.00 am, he was informed about the duty to

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attend the Vigilance office at about 10.30 am. He reported before PW11 at about 10.45 am.

28.But pointing out this evidence over the time, it was contended on behalf of the appellant that the complaint would not have been received by PW11 at about 10.00 am. But absolutely, I find no discrepancy in the evidence. At about 10.00 am, the complaint has been received by PW11 and immediately informed to PW3 office and in turn, he attended the Vigilance Office at 10.45 am. So how the appellant is able to find any loops in the above said evidence is not understandable.

29.Further the learned counsel appearing for the appellant would also attack Ex.P22. At about 10.00 am, since it has been stated that the request was made to depute the officials to report before him before 10.00 am hours on 18/07/2008. The officer, who received the request has also made a side initial, on 18/07/2008. Simply because, it has been stated that the officers must attend the vigilance office before 10.00 hours, it cannot be contended that it might have been prepared in advance. A simple mentioning of time as 10.00 am cannot be given any importance at all.

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30.Similarly, Ex.P8 has also heavily attached on the ground that it would not have been prepared.

31.Now let us go to Ex.P16 is the trap mahazar. We will deal with Ex.P16 later.

32.Now let us go back to Ex.P8. Even in Ex.P8, I am not able to find any discrepancy.

33.As mentioned earlier, it has been stated that at about 10.40 am, immediately after the attendance of the office, pre- trap arrangement process has been made.

34.Another contention that has been raised by the appellant is that there is contradiction with regard to the availability of one Elangovan at the time of pre-trap arrangement.

35.PW2 has stated that at about 10.45 am, both the official witnesses have attended the office. PW3 has stated in his chief examination that at about 10.45 am, the above said Elangovan was also present in the Vigilance office. But in the cross examination, he has

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stated that till 12.30 pm, the above said Elangovan did not attend the office. Only when the Inspector of Police and PW1 were present, after five minutes only, the above said Elangovan attended. But the last line of the cross examination is not connected with the previous question.

36.But the learned counsel appearing for the appellant wants to read the evidence, as if PW3 has stated that till 12.00 pm, the above said Elangovan did not come. So the pre-trap mahazar would not have prepared in the time mentioned. But a split up question has been made by splitting the events. It is not a single question for continuous events. So this contention also cannot be taken into account at all. So, I find no discrepancy in the pre-trap arrangement.

37.Now let go to the trap events. The evidence of PW2, PW3 and PW11 are very cogent and convincing with regard to trap event also. It is also supported by circumstantial evidence in the form of oral evidence of PW5, PW6, PW7, PW8 and PW9, who are the co-workers, higher officials of the accused. So, I find absolutely no reason to discard the evidence with regard to the trap

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events. So from their evidence, it is clear that trap was laid and the accused was arrested.

38.In the above said circumstances, let us go to the actual demand and acceptance alleged at the time of trap.

39.Let us go back to the evidence of PW2 on this aspect. He has stated in his evidence that he along with PW3 as instructed by PW11 went inside the office of the appellant. At that time, he was not available. When they went twenty minutes later, the appellant came and he made an enquiry and at that time, he enquired, whether he has brought Rs.200/- for the charges and Rs.400/- that was demanded by him. He handed over Rs.600/- and it was received by him and put the same in the bureau beneath a register. The time was about 2'O clock. The appellant asked him to come in the evening to collect the receipts. So during the cross examination, she has stated that they went inside the office of the appellant at 02.30 pm. At about 04.30 pm, he saw PW3 and the Inspector in the office of the appellant. After completing the process, they returned at about 05.00 pm, on that date. His evidence was sought to be contradicted to the evidence of PW3.

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40.PW3 has stated that at about 01.50 pm, they reached the office of the appellant. PW2 enquired about the transfer order and he demanded money and in-turn handed over by PW2.

41.No doubt, there is some contradiction with regard to the availability of the accused, when they visited the office on the date, so also the time.

42.PW3 has also stated that when they visited the office, the accused was available in the seat. So the question, which arises for consideration is whether from the contradictory version, the very trap itself can be doubted. Time factor is also very important. Because, PW3 was examined, on 13/06/2013 in chief and after two years, he was recalled and cross examined for two times. The event took place in 2008 and naturally, as the time lapses, human memories will also lapse.

43.But, as mentioned earlier, circumstantial evidence with regard to the trap is available in favour of the prosecution.

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44.PW6, who was working as Sanitary Inspector in the office was very clear in his evidence that at about 02.00 pm, the Vigilance Department officials visited the office and made the trap, so also the evidence of PW7 and PW8.

45.With regard to the time factor, I find that there is no evidence to disbelieve the above said persons regarding the time factor. So the contradictory evidence that was adduced by PW3 need not be given much importance for the reasons stated above.

46.From the evidence of PW6 to PW8, on 08/07/2008, the accused demanded the bribe amount and accepted the same. A bare denial has been made to the effect that no such money was accepted by the appellant as bribe amount.

47.At this juncture, it was argued that whether the money, that was alleged to be recovered from the accused is bribe amount or charges, there is no explanation has been offered by the prosecution.

48.The learned Additional Public Prosecutor would contend that no such suggestion was made to PW2 on this aspect. But from the evidence of PW5, it is clearly established that already the appellant remitted Rs.200/-

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towards charges on behalf of PW4. So Rs.400/-, which was smeared with phenolphthalein solution has been recovered at the instance of the appellant. He has to give proper explanation. But absolutely, no explanation is forthcoming.

49.Again. an argument has been advanced to the effect that the house tax arrears was not paid and so there is every possibility to the above said amount meant for arrears of tax, had an explanation be demanded from the appellant, he would have given proper explanation; The failure on the part of PW11 in getting explanation itself has caused prejudice to him. But this argument is a belated one without any proper evidence on record.

50.It was not the case of the appellant before the trial court that what was recovered from him is only tax arrears and not the bribe amount. So the belated explanation, at that time of argument without evidence will not help the appellant. So I find no merit in this arguments.

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51.At the lastly of the argument, it was submitted that now the appellant is aged about 75 years and no bad antecedent was also reported against him.

52.No doubt that the age may be a factor for considering the sentence. The offence of the year 2008 and the judgment was rendered in 2017 by the trial court. Now the appeal is disposed in 2023, after a lapse of 14 years. But the minimum period described under sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act is one year and the trial court has imposed the sentence only one year. So there is no question for modification of the imprisonment. Since the demand and acceptance has been proved beyond all reasonable doubt, I find no merit in this appeal.

53.For all the reasons stated above, this court is of the considered view that the findings rendered by the trial court does not require any interference.

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54.In the result, this criminal appeal fails and the same is **dismissed.** Confirming the judgment of the trial court.

25/01/2023

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Internet:Yes/No
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To,

1.The Special Court for cases
of Anti-Corruption cases-cum-
Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputhur.

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

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

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ILANGOVAN, J

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