IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

CORAM : MR. JUSTICE N.SESHASAYEE

Crl.A.No.113 of 2018

A.P.Sampathkumar ... Appellant

Vs.

State represented by
The Inspector of Police
Vigilance and Anti Corruption
Namakkal
(Cr.No.2/AC/2009) ... Respondent

Prayer: Criminal Appeal is filed under Section 374 Cr.P.C., to admit the appeal and call for the records in Special C.C.No.3 of 2010 on the file of the Special Court cum Chief Judicial Magistrate, Namakkal and set aside the same and acquit the accused.

For Appellant : Mr.V.R.Balasubramaniam

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

JUDGMENT

This appeal is preferred challenging the conviction for offences U/s.7 and

Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, as well as the sentence imposed for those offences in Spl.C.C.No.3 of 2010, on the file of the learned Special Judge cum Chief Judicial Magistrate, Namakkal.

2.The case of the prosecution is as below:

- The appellant herein was working as a Firkah Surveyor of Kalappanaickenpatti, between 18.01.2006 and 10.02.2009. The defacto complainant, Ramasamy and his brother jointly owned 2.93 acres of agricultural land in Survey No.346/2 in Thuthikulam Village which fell within the above said Firkah.

- The brothers had partitioned the property and to effect mutation of patta, Ramasamy had given Ex.P6, application to the Tahsildar on 26.06.2008. The other procedures followed, and on 08.12.2008, the Tahsildar had passed necessary proceedings for issuing separate patta to the petitioner based on the aforesaid partition.

- Later, Ramasamy came to know that necessary alterations were not made in the FMB sketch and therefore he went to the Village Administrative Office where he met the appellant herein a few times to correct the FMB sketch in tune with the proceedings of the Tahsildar dated 08.12.2008.

- While so, on 03.02.2009 at around 10.00 a.m. in the morning, Ramasamy met the appellant at the Revenue Inspector's office, then the appellant demanded Rs.500/- as illegal gratification. Again on 04.02.2009 at 10.00 a.m. in the morning, Ramasamy met the appellant, this time at the Village Administrative Office, and the accused reiterated his earlier demand. This was followed by another meeting on 09.02.2009 at 12.00 noon when the appellant is said to have inquired if Ramasamy had brought the bribe money. When Ramasamy informed the appellant that he had not brought the money, he asked Ramasamy to arrive at the Village Administrative office at 10.00 a.m. on the next day with the money.

2. It is in this circumstances, on 10.02.2009 at around 7.30 a.m.

Ramasamy approached the respondent with his Ex.P25 complaint. Receiving the said complaint, PW13 registered Ex.26 F.I.R. PW13 soon began his pre-trap proceedings and after completing the procedural formalities, he went to the Village Administrative Office along with Ramasamy and two official decoyed witnesses of whom PW2 is one, the other witness is one Rajasekaran. Both Ramasamy and PW2 came to pay Rs.500/- and forced him to receive it, and he did not receive it. According to the prosecution, the appellant required Ramasamy to leave the money in the Village 'A' Register and accordingly the money was left in the Village 'A' Register (Pg.No.176). Soon, PW13 landed in the scene and he tried to complete the remaining formalities. Since the appellant did not receive the sum, the Phenolphthalein Powder Test gave negative results. However, PW13 found Rs.500/- in the Village 'A' Register and seized them and these notes tested positive. He completed the remainder part of the trap proceedings. PW13 himself took up the investigation and it was later continued by PW14 and then by PW15. After conclusion of the investigation, PW15 laid a final report against the appellant for offences U/s.7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3.The trial Court proceeded to try the appellant for the charges that it had framed against him. However, even before trial, Ramasamy, the defacto complainant passed away. The prosecution had examined in all PW1 to PW15, marked Ex.P1 to Ex.P30 and produced MO1 to MO7. The appellant on his part has examined himself as DW1. After appreciating the evidence before it, the learned trial Judge convicted the appellant and imposed the sentence as below:

Offence	***Sentence imposed***
U/s.7 of the Prevention of Corruption Act, 1988.	Simple Imprisonment for four (4) years and a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month.
U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	Simple Imprisonment for four (4)years and a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month.

This judgment is now under challenge.

4.The learned counsel for the appellant made the following submissions:

a) In order an accused charged with offence U/s.7 of Prevention of Corruption Act, 1988 could be convicted, the prosecution shall establish the triple criteria contemplated without a let or a miss. It ought to prove that there was a demand, that there was a payment and that the bribe money was indeed accepted. Here the defacto complainant Ramasamy had passed away even before the trial and hence demand has not been established. Secondly, even according to the prosecution, appellant had not received the money which implies even though there was a payment by Ramasamy, the appellant had not received or accepted the said payment. Thirdly, the money was found only in the Village 'A' Register and the appellant was not a custodian of that document. The money in the Village 'A' Register cannot therefore, be even remotely associated with the appellant.

b) According to the prosecution, the appellant demanded bribe for making corrections in the FMB, but PW8, Tahsildar in his cross examination has stated that corrections in the FMB have already been made even prior to issuance of proceedings for issuing separate patta. Therefore, when the job is already done, the very allegation of Ramasamy that FMB had not been corrected is false.

c) The appellant during his examination as DW1 has categorically explained how Ramasamy was keen to trapping him in this case. He had also deposed that all the records such as the FMB sketches will be only in the custody of Tahsildar and that he can have only limited access to the same subject to instructions of the Tahsildar.

5.Summing up his arguments, the learned counsel submitted that presumption U/s.20 of the Prevention of Corruption Act, 1988 will come into application only when the prosecution had satisfied the minimum requirements which statute mandates. Here, in this case neither the triple criteria for instituting a case U/s.7 of Prevention of Corruption Act, 1988 is established nor the appellant has custody of Village 'A' Register from which money was seized.

6.Per contra, Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) submitted that Section 7 of the Prevention of Corruption Act, 1988 can operate disjunctively from Section 13(2) of the Prevention of Corruption Act, 1988, and therefore mere failure of the prosecution to establish all the triple criteria for constituting an offence U/s.7 of Prevention of Corruption Act, 1988, *per se* cannot absolve the criminal liability of the appellant U/s.13(2) of the Prevention of Corruption Act, 1988. He necessarily has to explain how the money could be recovered from Village 'A' Register. Even if the appellant's case is scrutinized, it does not say that Ramasamy did not offer money, but he merely says that he did not receive it. Money paid but not received, but still found in Village 'A' Register implies that an intent of the appellant is to ensure that money reaches the custody of the bribe giver to the bribe taker. When this money is recovered by the prosecution, then the duty is cast upon the appellant to explain it, which burden he has not discharged.

7.Rival submissions are carefully weighed. While the appellant seeks inductive logic to establish his innocence, the learned prosecutor appears to rely on deductive logic to accomplish his objective. Going by the appellant's statement, the demand was not made, money was not received, therefore the offence U/s.7 of Prevention of Corruption Act, 1988 is incomplete and since Section 13(2) of the Prevention of Corruption Act, 1988 forms the tail of the major offence U/s.7 of

Prevention of Corruption Act, 1988, when once the offence U/s.7 Prevention of Corruption Act, 1988 fails, offence U/s.13(2) of the Prevention of Corruption Act, 1988 necessarily fails. However, the learned prosecutor adopts a different strategy. According to him, if the money is found in the Village 'A' Register, which at any rate is not maintained or over which the defacto complainant had any control, then the appellant has to do a lot of speaking to explain as to how the money came there. No same person given to his senses will try to keep some currencies in some registers unless it is specifically intended by the one who demanded the money. Therefore, he goes from the reverse side from recovery of money from the Village 'A' Register, and from which he gives a chain to create a strong probability that the money could not have come unless there was a demand by the appellant.

8.While the learned prosecutor's effort deserves to be appreciated for its novelty, yet this Court may have to record that they are not impressive enough to influence this Court. The ingredients that would go to constitute an offence U/s.7 of Prevention of Corruption Act, 1988, hardly requires an elaborate statement from the Court. Now, this triple criteria need to be established first in order prosecution may bang on presumption under Section 20 of the Prevention of Corruption Act, 1988. The Court cannot presume a demand unless it is established, and the converse possibility which the learned prosecutor canvassed cannot be ruled out, but then it ought to be established first that the place from where the money is recovered by the Investigating agency is one over which the accused had control. If unaccounted money is seized from the residence of an accused, still Section 13(2) of the Prevention of Corruption Act, 1988 will apply, but that need not be followed by Section 7 of the Prevention of Corruption Act, 1988. Here, the prosecution has not established that the Village 'A' Register from which the bribe money was recovered was officially under the custody of the appellant. Necessarily the situation creates a reasonable doubt as to whether the money recovered could be attributed to any demand of the appellant.

9.This Court finds that the prosecution has collected bits and pieces of evidence, but they were not able to connect the dots to complete its objective of establishing its case in order Section 20 of the Prevention of Corruption Act, 1988, could be invoked.

10.In conclusion, this Court finds that the present case is not the one where this Court may convict the appellant. This appeal is allowed accordingly. The conviction and sentence imposed on the appellant in Special C.C.No.3 of 2010, on the file of the Special Court cum Chief Judicial Magistrate, Namakkal is set aside, and fine amount, if any paid by the appellant is directed to be refunded.

09.09.2024

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Index : yes / no
Neutral Citation

To

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