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Crl. A. No.16 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal No.16 of 2018

Rajendran

... Appellant

Vs.

The State represented by
Inspector of Police
Vigilance and Anti Corruption
Ariyalur District

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in Spl. Case No.5 of 2013 dated 19.12.2017 passed by the learned Chief Judicial Magistrate-Special Judge, Ariyalur and set aside the judgment of conviction.

For Appellant : Mr.A.Saravanan

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

JUDGMENT

The sole accused in Special Case No.5 of 2013 on the file of Chief Judicial



Magistrate Court/Special Court, Ariyalur, has come forward with this appeal challenging his conviction for offences under Section 7, 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act, and also the sentence of five years simple imprisonment imposed on him for offences under Section 7 of the P.C. Act and seven years simple imprisonment for offence under Section 13(2) r/w.(1)(d) of the P.C. Act.

2.1. The prosecution comes up with a candid case:

- a) The appellant was a Sub Registrar. He was deputed as the Special Officer of Marudhur Co-Operative Society engaged in running ration shops at Jayankondam. PW2, was an erstwhile employee of a ration shop run by the said Co-Operative Society. P.W.2's terminal benefits had not been fully disbursed.
- b) On 31.01.2013 at 1.00 p.m in the afternoon, P.W.2 had visited Marudhur Co-Operative Society to meet the appellant. There he was informed by PW4, the Secretary of the Co-Operative Society that the appellant had gone to Jayankondam for a meeting. PW2, would then go to Jayankondam, to the very venue of the meeting, and met the appellant and enquired about the payment of his terminal benefits which are pending



payment.

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- c) It was then, the appellant was alleged to have demanded Rs.13,000/- as bribe for processing the papers pertaining to the terminal benefits of P.W.2 and P.W.2 was required to come with the money on the following day.
- d) On the same day (31.01.2013), at 6.00 p.m P.W.2 preferred Ext.P2 complaint before the Inspector, Vigilance and Anti Corruption, Trichy, and on the same day, necessary approval was obtained, and P.W.1 has sanctioned the registration of the complaint. Accordingly, at 8 p.m., PW13, the TLO, registered Ext.P14 FIR, began organising for holding a trap on the next day.
- e) After completing the pre-trap procedure, P.W.13 entrusted three planted currencies under Ext.P5 entrustment magazar. P.W.2 had Rs.13,000/-, all of Rs.500/- denomination, of which three select notes were smeared with phenolphthalein powder, and reached the office of the appellant with his team, which included P.W.2, the defacto complainant, and P.W.3 and P.W.4, both of whom were the shadow witnesses for the trap.
- f) It was 10.10 hrs on 01.02.2013, when P.W.2 reached Marudhur Co-operative Society. The appellant was not there, and when P.W.2 contacted the appellant from a PCO, he was told that the appellant was at



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Amaravathi. Therefore, TLO went with his team to Amaravathi to another co-operative society. Eventually, the team lead by the TLO landed there.

- g) The time was 11.20 a.m. P.W.2 tendered the bribe-amount, which to remind, contained the three planted notes. The appellant received the amount and kept it in his denim bag. P.W.3, one of the shadow witnesses for the event was along with P.W.2 when the money was tendered by P.W.2 and received by the appellant. Soon P.W.13 was alerted and he descended on the scene with P.W.4, and held the trap-test, and the result proved positive. The trap indeed was successful. The TLO seized all the necessary material objects, including the currencies under Ext.P6 seizure magazar.
- h) And this completes the offence under Section 7 of PC Act, and the appellant was still in possession of Rs.11,500/- which he could not account for, and this according to the prosecution has invited the offence under Section 13(2) r/w. 13(2) r/w. Section 13(1) (d) of the Prevention of Corruption Act.
- i) Thereafter the PW14 took up the investigation, and thereafter PW15 continued it and laid the final report.



2.2. The trial court had framed necessary charges and tried those charges. During trial, the prosecution examined PW1 to PW15, produced Exts.P1 to P18 and MO1 to MO3. The appellant on his side examined DW1 and DW2. Post trial, the trial court was convinced that the appellant was guilty of the offences he was charged with, convicted and sentenced him as outlined in the opening paragraph of this judgment. This judgment is now in appeal.

Arguments:

3. Learned counsel for the appellant made the following submissions:

- a) The trap was organised on 01.02.2013. According to the prosecution, the trap-team, led by PW13, went to Marudhur Co-Operative Society. It may have to be underscored that according to the prosecution even on the previous day, when PW2 had met the appellant at Jayankondam, he was alleged to have asked PW2 to come to Jayankondam to hand over the bribe money. In spite of the same, the trap-team chose to land at the office of the Marudhur Co-Operative Society. The appellant was contacted telephonically from a PCO as to where the appellant was. The appellant had told him that he was at Amaravati, and he was alleged to have



required PW2 to come with the money to Amaravathi.

- b) Accordingly, the entire trap-team travelled to Amaravathi. It was 11.20 a.m at the relevant time. On that day the appellant had gone on an official visit to certain Co-Operative Society at Amaravathi in his capacity as the Joint Registrar of Co-Operative Societies. The office was in the first floor and the money was tendered and received with PW13 completing the rest of the procedures as contemplated in the statute.

3. The line of defence adopted by the appellant is that :

- a) PW2 was working as a Senior Writer in a ration shop run by Marudhur Co-Operative Society and he had superannuated in 2004. So far as the payment of the terminal benefits goes, only a part of his terminal benefits were released to him and that R.1.43 crores was withheld since PW2 was found guilty of certain misconduct in a domestic enquiry which resulted in recovery of certain amounts from PW2, Therefore, it is not as if PW2 was entitled to receive his entire terminal benefits, which implies that the appellant had not interfered with disbursement of the terminal benefits of the appellant.
- b) At any rate, the appellant, as the Special Officer of Marudhur Co-



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Operative Society did not have any role in disbursing the terminal benefits to PW2 either on 31.01.2013 or on 01.02.2013. In terms of Section 88 of the Tamil Nadu Co-Operative Societies Act r/w Rule 106 of the Tamil Nadu Co-Operative Societies Rules, a Special Officer though has an authority to issue proceedings for payment of terminal benefits to any superannuated staff of the Co-Operative Society, yet he can act only as per the resolution passed by the Board of the Co-Operative Society. In the instant case, the Board of the Co-operative Society had not passed any resolution prior to 31.01.2013. However, the prosecution has produced Ext.P8, a minute of the resolution of the Board of the Co-Operative Society sanctioning release of terminal benefits to PW2 which had been withheld by an earlier proceedings. Alongside prosecution has also produced Ext.P10, a proceeding of a Special Officer issued in pursuant to Ext.P8, which was not issued by the appellant, but by his successor, namely PW5. Significantly enough neither Ext.P8 nor Ext.P10 carries a date on which these documents were made, nor they show a date on which they were produced before the court. Indeed there is no court seal or signature of the Presiding Officer of the court indicating their receipt.

c) What is significant is that these two documents could not have come into



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existence even on 01.02.2013, since the trap had happened on that very date, which implies that all these documents could have come into existence only subsequently, and it is hence both the Board of the Co-Operative Society as well as PW5 had chosen not to give a date to Exts.P8 or P10.

- d) Therefore, on 01.02.2013, when the trap-team landed in Amaravathi, the appellant did not have any role in disbursing the amount, and at any rate, did not have the authorisation of the board of the Co-Operative Society to disburse it. Therefore, when no business could be done by the appellant on 01.02.2013, he could not have demanded Rs.13,000/- as bribe.
- e) So far as the trap itself is concerned, there is a considerable degree of inconsistencies. The appellant, as stated earlier, the Co-Operative Society at Amaravathi which the appellant had visited officially on 01.02.2013 was functioning at the first floor of a certain building. PW2, the de-facto complainant has testified in his cross-examination that he paid the money to the appellant in the first floor and the appellant had received the same, counted them and then put it in his shoulder bag. However, PW3, the shadow witness to the event, has deposed that the bribe money was paid right in the ground floor, and the same was received by the appellant and



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was put in his shoulder bag. PW13, the TLO, in his cross-examination states that the money was recovered from the shoulder bag of the appellant. This implies the TLO had not arrived at the scene at the time either when the money was received by the appellant or when it was being counted by him. In other words, when the TLO arrived at the scene, the money had already been kept in the bag.

- f) The appellant contends that he had left his shoulder bag in the two-wheeler in which he travelled and the money was already placed in his bag and then the appellant was required to take the cash from the bag and to hand it over to the TLO. His hands became tainted not because the money was received and kept but because it was removed from the bag at the instance of PW13.
- g) But why at all PW13 should be anxious to claim a story of bribe giving and bribe taking against the appellant? Here the appellant contends that on the previous day (31.01.2013), when PW2 visited the appellant at the meeting venue at Jayankondam, the appellant is said to have given a piece of his mind owing to the nuisance value which PW2 has created at Jayankondam and there ensued a wordy altercation between the two. While PW2 denies the same, DW1 and DW2 who were couple of



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participants in the meeting at Jayankondam on that date, speak to the wordy altercation between the appellant and PW2.

- h) Now seen in the context, PW2, apparently thought it fit to settle some scores with the appellant on the belief that it was the appellant who was putting spokes in the wheels on the release of his terminal benefits. It may be his misconception, but that precisely had landed the appellant in trouble.
- i) It is hence, where the money was paid and received and from where the money was recovered becomes significant. A bribe money cannot be given at two independent places. PW2 says that it was received in the first floor where Amaravathi Co-Operative Society functions, but PW3 says it was received at the ground floor and PW13 says that it was recovered from the bag of PW2. The line of story which prosecution provides appears to provide an in-built rebuttal for the presumption that statute provides in aid of the prosecution under Section 20 of the Act. After all, the appellant need not travel the entire distance to rebut the statutory presumption but only needs to do remedy as to render the prosecution case suspect.
- j) Turning to the shadow witness, PW3, he says that he has not been authorised or nominated. It is on the basis of oral instruction of his



superior, based on a telephonic request from PW13, he became part of the trap-team. However prosecution had produced a letter requesting the nomination to be made by the superior of PW3, but this document was not seemed to have been produced before the court in time, since it does not bear the court seal or the signature of the Presiding Officer of the court.

- k) Exts.P8, P10, P15 and P16 are not in time, and none of these documents has the signature of the Presiding Officer of the court or the court seal.
- l) Yet another point which may tilt the reliability of the prosecution case is the presence of the investigating officer throughout the trap proceedings. PW3 in his testimony says that the DSP was present right through the trap proceedings, which is inconsistent with the testimony of PW2.

4. Per contra, the learned Government Advocate (Crl. Side) submitted that notwithstanding the shades of inconsistencies which the appellant has projected, the fact remains that the money was recovered from the denim shoulder bag of the appellant. When the money was recovered from his bag, then it is imperative that it has to be explained. Here, the appellant comes out with a suggestion during cross-examination of PW2 that on 01.02.2013 as he was descending the flight of steps leading to Amaravathi Co-Operative Society, he was followed by



PW2 and that since the appellant was carrying on certain official document with himself, he required PW2 to carry his denim shoulder bag and PW2 was nurturing some grievance owing to certain altercation which the appellant alleged to have encountered on the previous day and hence he dropped the money into the denim shoulder bag. Without the knowledge of the appellant. It made an interesting screenplay but it is unbelievable. In essence, the appellant has not been able to rebut the presumption under Section 20 of the PC Act. When the money was paid and received was established and the trap was proved to be successful in terms of the ratio in ***Neeraj Dutta vs State [Government of NCT of Delhi]*** (2023 4 SCC 731), the demand has to be presumed.

5. Rival contentions are carefully evaluated for their respective merit. The materials available on record are also carefully perused. There are a few pieces of jigsaw puzzle which the prosecution throws at the appellant, and the appellant on his part arranges the same jigsaw puzzle in a certain way. Now, where the arrangement of the facts by the prosecution creates certain logical chain then till the defence could not unsettle it, the prosecution cannot feel assured to reach ashore safely. The points that drew the attention of this court may be bullet pointed as below:



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(a) Neither on 31.01.2013 nor on 01.02.2013, the two crucial dates which are relevant to the prosecution case, the appellant had any authority to pass any proceedings for releasing the terminal benefits of PW2. Indeed it is not the prosecution case that the Board of the Marudhur Co-Operative Society had passed necessary resolution prior to 31.01.2013 and despite passing of the said resolution, appellant had kept it pending in his desk. And Rule 106 of the Tamil Nadu Co-Operative Society Rules though enables or empowers the Special Officer to pass necessary proceedings vis-a-vis the payment of the terminal benefits to a retired staff of the Co-Operative Society, yet unless there is a resolution of the Board of the Co-Operative Society is in place, he may not disburse the terminal benefits due to P.W.2.

(b) A mere absence of an official duty to be performed on the date on which bribe money was alleged to have received need not necessarily weigh in the minds of the court to hold the alleged bribe-taker was innocent. It requires something more. In the instant case, prosecution had produced Exts.P8 and P10, both of which respectively are the minutes of the resolution of the Board of the Co-Operative Society as well as the consequential proceedings issued by the P.W.5 successor Special Officer



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of the appellant. These two documents did not bear any date, but it is certain that could not have come into existence before 01.02.2013. If that is so, then nothing prevented the Board of the Co-Operative Society to give a date to its resolution in the Minute Book. Nor anything prevented PW5 to give date to his proceedings. This implies that at the time when the appellant was arrested immediately after the trap on 01.02.2013, neither of these documents could have been in existence. Significantly when these documents were left in the custody of the court is also uncertain.

- (c) The next point which baffles this court is that why at all the trap-team should chase the appellant to Amaravathi on 01.02.2013. Here it is to be noted that PW2 in his testimony had not merely admitted that on 31.01.2023 he met the appellant at Jayankondam while he was in another official meeting which did not concern the affairs of the Marudhur Co-Operative Society. PW2 did not have any business to go to Jayankondam on 31.01.2013. It has come out in evidence that the appellant, besides being the Joint Registrar of Co-Operative Societies, was also appointed as a Special Officer for more than half a dozen Co-Operative Societies. When he is faced with multiple responsibilities pertaining to several Co-



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Operative Societies besides his own responsibility as a Joint Registrar of Marudhur Co-Operative Society, he might have been justly irritated to have seen PW2 bothering him at the venue of a certain official meeting. While it was suggested to PW2 that his visit to Jayankondam was unwelcomed by the appellant and that resulted in some wordy differences between the two, it was denied by PW2. But this was supported by DW1 and DW2, both of whom were participants of the meeting at Jayankondam on 31.01.2013. Given the fact that appellant had burdened with enormous volume of responsibility, it is possible to presume that he might not have appreciated the idea of PW2 visiting him in a place other than the Co-Operative Society. And significant enough PW2 in his testimony has not deposed that on 31.01.2013 appellant had demanded any bribe money.

(d) While PW2 says that there was a demand for bribe money on 31.01.2013, given the fact on the face of DW1 and DW2, it might be difficult to presume that in the midst of a wordy altercation, the appellant could not have demanded bribe money.

(e) What becomes curious is that the entire sequence of the prosecution case is about the very procedure or proceeding involving the trap laid by PW13. On 01.02.2013 right in the morning the trap-team landed at the



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Marudhur Co-Operative Society. The appellant apparently was at some other official engagement elsewhere in Amaravathi Co-Operative Society.

Technically speaking the trap ought to have been declared failed on the date and the trap-team should have gone back. But the trap-team travelled to Jayankondam in search of the appellant as if it was searching some absconded accused, and tried to find him in the Co-Operative Society there. PW2 was informed that the appellant had not arrived at the place. P.W.2 claims that he had made a call from a nearby PCO to the appellant, and then travelled to Amaravathi Co-Operative Society which is situated at Jayankondam - Ariyalur Highway. Amaravathi Co-Operative Society functions in the first floor and team travelled there. PW2 apparently appears to be keen to have the appellant trapped that day somehow. Whatever might be, for the intent of PW2, PW13 need not have shared undue anxiety with PW2.

- (f) The team travelled to Amaravathi Co-Operative Society. Here what becomes critical is that where the money was paid. Ext.P17 is the rough sketch which describes the SOC and Ext.P7, is the observation mahazar. According to it a certain outlet run by a Co-Operative Society is functioning on the ground floor of the building and on the rear side of the



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building there is a verandah and there is also a flight of steps in the said verandah which leads to the first floor. According to PW3, the shadow witness who accompanied PW2, the money was said to have been paid in the verandah in the ground floor. However, according to PW2, money was paid in the first floor. As rightly contended by the learned counsel for the appellant the same bribe money could not be given at two different places.

(g)PW13, the TLO had landed to complete the trap some 10 minutes thereafter. And when PW13 arrived at the scene, the bribe money was taken from a denim shoulder bag of the appellant. What was critical is that at the time when the money was taken out of this bag, zip of the bag was already left opened.

6. If the entire facts as discussed above is now sequentialised, it leads to a probable situation where PW2 might have been injured over something that might have happened at Jayankondam on the previous day i.e. 31.01.2013, and it is probably to settle those scores, he might be chasing the appellant to a place where he was officially scheduled to visit, and PW13 appeared to have yielded to the requirements of PW2.



7. If money was paid in the first floor, then PW3 could not have seen it. And if the money was paid in the verandah, then PW2 apparently was uttering a false statement. The SOC obviously gets suspicious. But, the fact remains that the bribe money was eventually recovered from the denim bag of the appellant. Here, the defence theory is that since the appellant was carrying quite a few official papers with him, he required PW2 to carry his shoulder bag for him and taking advantage of the situation, PW2 might have dropped the currency inside the bag.

8. The line of the defence in trying to explain how the planted currency as stand alone fact without associating it with other facts involved in this case, appears truly cinematic, but when the same fact is considered alongside other facts then the defence version does not appear improbable: P.W.2's anxiety to trap the appellant on the very day, P.W.13's shared anxiety to trap the appellant as if there was no tomorrow, and chasing the appellant to a place where the appellant had gone on an official visit, followed by confusion over the SOC, and recovery of planted money from a bag whose zip was open at the time of recovery taken together improbabilises the prosecution case. It is true, the moment the trap-test is proved successful, the presumption under Sec.20 of the PC Act invites itself .



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But for the defence to rebut the presumption it only needs to create a certain improbability in the case of the prosecution case. Here the defence was successful in creating that improbability.

9. In the result, the criminal appeal is allowed and the judgment of the Chief Judicial Magistrate-Special Judge, Ariyalur, dated 19.12.2017 in Spl. Case No.5 of 2013, convicting and sentencing the appellant is set aside. The appellant is set at liberty and the bail bond executed by the appellant is discharged.

24.09.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

Asr

To:

1.The Judicial Magistrate-Special Judge
Ariyalur.

2.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE, J.

Asr

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