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Crl. A. No.284 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal No.284 of 2018

G.Sundaramoorthi (died)

S.Varadhalakshmi

... Appellant

Vs.

State Rep by
Deputy Superintendent of Police
Special Investigation Cell
Vigilance and Anti-Corruption
Chennai - 28

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of the learned Special Judge for the cases under Prevention of Corruption Act, at Chennai in C.C. No.5 of 2012 dated 13.04.2018.

For Appellant : Mr.K.Venkatramani, Senior Counsel
for Mr.S.Muthappan

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



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JUDGMENT

The appellant was serving as the Inspector of Police in Social Justice and Human Rights Wing of the Tamil Nadu Police Department at Chennai. He has challenged his conviction for offences under Section 7 and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, as well as sentences imposed on him by the Special Court for the cases under Prevention of Corruption Act, Chennai.

2. The prosecution case is as below :

- a) A certain Kumar had preferred a complaint against one Ethirajan (P.W.2), receiving which, CSR alone was issued by the police, and that was being enquired into by the appellant.
- b) While so, P.W.2 against whom the complaint was preferred, approached the investigating officer for closure of the case against him.
- c) On 12.11.2010, the appellant is said to have made a demand for Rs.10,000/- to do favours to PW2. Later, on 13.11.2010, the appellant is said to have made a cellphonic demand for Rs.25,000/-. Subsequently, he is alleged to have made another cellphonic demand



for Rs.5,000/-.

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- d) Not interested in paying the bribe and still not inclined to let that go, on 15.11.2010, P.W.2 approached the respondent police with his Ext.P2 complaint, receiving which P.W.10 registered Ext.P9, FIR. After obtaining Ext.P1 sanction, he proceeded to prepare arrangements for trapping the appellant.
- e) On 16.11.2010, after completing the pre-trap procedures, P.W.10 proceeded to the office of the appellant along with P.W.2, and P.W.3 and P.W.4, the two official witnesses for the said purpose.
- f) P.W.2 tendered 10 x Rs.500/- notes, all smeared with phenolphthalein powder. The appellant received the same and walked into the trap laid by P.W.10.
- g) P.W.10 would now descend at the scene on being alerted by P.W.2 and completed the remaining proceedings. The trap was successful.
- h) Thereafter, P.W.11 began his investigation and completed the remainder part of the investigation and laid his final report.

3.1 The trial Court framed necessary charges against the appellant and proceeded to try the same. During trial, the prosecution examined P.W.1 to P.W.11, produced Ext.P1 to Ext.P12 and M.O.1 to M.O.5. The appellant did not examine



anyone on his side nor did he choose to produce any documentary evidence.

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3.2 After appreciating the evidence, the trial Court found the appellant guilty (now deceased) and imposed the following sentences on him :

<i>Offence</i>	<i>Sentences</i>
Section 7 of Prevention of Corruption Act	One year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment.
Section 13(2) of r/w.Sec.13(1)(d) Prevention of Corruption Act	Two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment

This judgment is now under challenge in this appeal.

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

- While the case of the prosecution is that the first demand was made on 12.11.2010 and the second demand was made on 13.11.2010 and there was no demand on the date on which the trap was laid.
- That the appellant demanded Rs.10,000/- initially and raised it to Rs.25,000/- and brought it down to Rs.5,000/- itself does not lend any degree of credibility to the statement of PW2.
- According to the prosecution, the second demand was on 13.11.2010



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and the subsequent demands were cellphonic demands but the prosecution has neither produced the call data nor any text of such conversation. Therefore, except the self-serving statement of PW2, there is nothing on record to indicate that there was a demand.

d) According to the appellant, before 16.11.2010, the date on which the trap was laid, the appellant had even closed the case as against PW2 as mistake of fact. This even PW2 has admitted. When no favour was required to be made and when there is no demand on 16.11.2010, there was no need for taking bribe.

5. As far as the issue that brought PW2 before the appellant is concerned, the tenant of PW2 (Kumar) had preferred a complaint vis-a-vis certain tenancy dispute and the appellant had required PW2 to produce certain appeal papers which PW2 had filed before the Rent Control Appellate Tribunal, and since the de-facto complainant has also indicated that PW2 had committed a crime under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the matter came to be handled by the appellant, and the appellant in all bona fide required PW2 to make available a copy of appeal papers only to ascertain whether the complaint made against the appellant was motivated. Indeed in his cross-examination, PW2 admits that he had been required by the appellant to



make available the copies of the appeal papers which he had filed before the Rent Control Appellate Authority and he had produced them. (The senior counsel took me through certain part of cross examination of the investigating officer.)

6. The learned Government Advocate (Crl. Side) would submit that the facts which are not disproved are:

(a) That PW2 had parted Rs.5,000/- which was planted for the trap, that the appellant had received it, and that the appellant had thereafter kept the money in his left pocket of the pants and these facts cannot be disputed since the trap was successful. The investigating agency has seized the pants which the appellant was wearing at the relevant time and PW9, the Forensic Chemical Examiner, had found presence of phenolphthalein in left pocket of MO4.

(b) When payment of money and its acceptance are established, the proof of demand would easily be inferred. Reliance was placed on ***Neeraj Dutta Vs State (Government of NCT of Delhi)*** [(2023) 4 SCC 731].

7. It is a case of perfect trap where P.W.2 had tendered Rs.5,000/- (Rs.500/- x 10 notes), all smeared with phenolphthalein powder and that the appellant had



received it and also kept it in his pants pocket. And the defence was that on the date of trap, there was nothing that the appellant needed to do for P.W.2 as he had closed the case against P.W.2 even prior to that. Now it is not so much as to whether the appellant was yet to do something, for which he had accepted the money but it is all about whether P.W.2 knew about it.

8. Turning to actual receipt of the planted currencies, the defence is not able to explain why the appellant touched the money and kept it in his pants pocket. Here this Court draws a distinction between receipt of money and acceptance of money. An act of receiving the money, unaccompanied by requisite *mens rea* to hold it, may not constitute a crime, for the recipient of the money could have received it for any other legitimate purpose which the bribe giver might have considered as a bribe. However, the moment the planted money is received by an accused person, Sec.20 of the Prevention of Corruption Act comes into play. After all, a trap test could only establish the giving and receiving of money which are but a mere physical facts capable of being proved. But what is necessary for constituting a crime is whether there was an intention on the part of the accused person to hold the money, for which there is no justification in law. Here is a situation where the appellant had received the money, kept the same in his pants pocket and he has not been able to offer any justifiable reason for



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holding it for himself. Therefore, this Court holds that the appellant had received the bribe money with a view to accept it as bribe money. If these two facts are proved, necessarily demand for bribe can be inferred from there.

9. This Court does not find any reason to interfere with the judgment of the trial Court in convicting the appellant. And this Court does not find that the sentences imposed on the appellant is disproportionately high.

10. In the result, the appeal is dismissed and the judgment of the trial Court in C.C.No.5 of 2012 dated 13.04.2018 convicting the appellant is hereby confirmed. Since the appellant has died, necessarily the sentence part of the trial court judgement has abated.

03.10.2024

Asr/ds

Index : Yes / No

Neutral Citation : Yes/No

To

1. The Special Judge for the cases under Prevention of Corruption Act, at Chennai
2. The Public Prosecutor, High Court, Madras



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N.SESHASAYEE, J.

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