



Crl.A.No.97 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

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V.Willys

... Appellant

Vs.

State represented by

The Deputy Superintendent of Police,

Vigilance and Anti-Corruption,

Villupuram.

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 to set aside the conviction and sentence imposed upon the appellant/accused by the Special Court for Prevention of Corruption Act Cases, Villupuram in Special Case No.37 of 2014 dated 08.02.2019 and allow the appeal.

For Appellant : Mr.R.Shanmugasundaram
Senior Counsel
for Mr.K.Venkatapathy

For Respondent : Mr.S.Santhosh, GA



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J U D G M E N T

Challenging the conviction and sentence imposed on the appellant/accused by the learned Judge, Special Court for Prevention of Corruption Act Cases, Villupuram in Special Case No.37 of 2014 dated 08.02.2019, the present appeal has been preferred by the appellant.

2. The brief facts which leads to the filing of the present appeal is as follows:

a)The appellant herein has been arrayed as A2, who was the driver of the first accused Tahsildar, Kallakurichi. PW2/de-facto complainant filed an application to the RDO, Kallakurichi to remove an encroachment in poramboke land in S.No.80/3 by one Muthusamy and the same was ordered. Non compliance of the order of the RDO made the de-facto complainant to approach this Court and this Court also passed an order favouring the de-facto complainant on 10.09.2009 for removing the said encroachment. In spite of the Court order, there was inaction on the part of the officials. Hence, the de-facto complainant approached A1, who was the Tahsildar of Kallakurichi. For performing his duty, A1 demanded

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Rs.1,50,000/- but on negotiations, it was reduced to Rs.1,00,000/- and directed him to pay a sum of Rs.25,000/- initially and the balance to be paid on completion of work. On 13.11.2009, A1 reiterated the same to the defacto complainant and made him to pay Rs.25,000/- to A2 and A2 received the amount. Thus, A1 committed the offence punishable under Sections 7, 13(1)(d) r/w. 13(2) of PC Act r/w.109 IPC and A2 committed the offences punishable under Section 8 of PC Act r/w.109 IPC.

b)During examination under Section 313 Cr.P.C., itself, A1 died and the charges against him got abated. During trial, P.W.1 to P.W.8 were examined and Exs.P1 to P31 & M.O.1 & M.O.2 were marked on the side of the prosecution and DW1 was examined and Ex.D1 was marked on the side of the defence.

c)On analyzing the oral and documentary evidence, the trial Court found the appellant herein/A2 guilty of the offence under Section 12 of the PC Act in Spl.C.C.No.37 of 2014. Consequently, the trial Court convicted him and sentenced him to undergo 4 years R.I. and to pay a fine of Rs.1000/- in default to undergo one month S.I.



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3. Aggrieved over the same, the present appeal has been preferred by the appellant/A2.

4. Heard Mr.R.Shanmugasundaram, learned Senior counsel for the appellant and Mr.Santhosh, learned Government Advocate appearing on behalf of the respondent.

5. The learned Senior counsel for the appellant submitted that the allegation against the appellant herein/A2 was that he received the illegal gratification for A1 from the de-facto complainant and handed over the same to A1 and hence, the charge under Section 8 of PC Act was framed against him but however, the trial Court had erred in altering this section and framed the charge under section 12 of PC Act. He further stated that there was a contradiction in regard to the place of receiving the bribe amount as per the version of PW3, which has not been taken into consideration by the trial Court. Moreover, the learned trial Judge has failed to note the vital point from the deposition of DW1, who has stated that the appellant had avoided to receive the amount but however the de-facto complainant forcibly trusted the same into his pocket so as to hand over the same to A1.



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6. In furtherance, the learned Senior counsel contended that prosecution witnesses were not allowed to cross examine by the accused on the newly framed charge. He also contended that there was absolutely no evidence to substantiate that A2 was aware of the bribe amount and received the same, hence, the charge of abetment cannot be made out as against the appellant herein and also that the presumption under Section 20 of the PC Act is not available as against the appellant.

7. In support of his contentions, the learned Senior counsel relied upon the following decisions:

a) *Bhimanna Vs. State of Karnataka* reported in 2012 (9) SCC 650;

b) *Dr.Nallapareddy Sridhar Reddy V. State of Andhra Pradesh and Others* reported in 2020 (12) SCC 467;

c) *Rohtas and another V. State of Haryana; Bijender Vs. State of Haryana* reported in 2021 (19) SCC 465;

d) *Ravi Dhingra Vs. State of Haryana* reported in 2023 (6) SCC 76; and

e) *Chandra Pratap Singh V. State of Madhya Pradesh*



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reported in **2023 (10) SCC 181.**

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8. Thus while concluding his submissions, the learned Senior counsel contended that the trial Court without proper appreciation of the evidence, had erred in convicting him and hence, the same has to be set aside and thus prayed this Court to allow the present appeal.

9. Contrary to the submissions made by the learned Senior counsel, the learned Government Advocate submitted that the case has been proved by the prosecution through oral and documentary evidences and also that the prosecution had established the seizure of illegal gratification in the presence of official witness from the appellant and thereby created a presumption under Section 20(2) of PC Act. He submitted that the prosecution has proved its case beyond reasonable doubts.

10. He relied on the decision of the Hon'ble Supreme Court in the case of ***Neeraj Dutta V. State [Govt. of NCT of Delhi]*** reported in **2023 (4) SCC 723**, wherein the Court has held that the presumption of fact with regard to the demand and acceptance or



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obtainment of an illegal gratification may be made by a Court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. The relevant paragraph of the decision which reads as under:

"88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands."

11. While continuing his arguments, the learned Government Advocate relied upon the judgment of the Hon'ble Supreme Court in the case of **Dr.Nallapareddy Sridhar Reddy Vs. State of A.P.** reported in **2020 (12) SCC 467**, wherein it has held that the only



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constraint on the Court's power is the prejudice likely to be caused to the accused by addition or alteration of charges. The relevant paragraph of the order is as follows:

"From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there is an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the



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accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

12. He further submitted that the Court has exercised its powers under Section 216 judiciously and ensured that no prejudice was caused to the accused and he was allowed to have a fair trial. It is pertinent to note that Sections 216 and 217 Cr.P.C., deals with the alteration of charge and recall of witnesses when charge was altered. Sections 216 and 217 of Cr.P.C., have been extracted for ready reference:

216. Court may alter charge.

1.Any Court may alter or add to any charge at any time before judgment is pronounced.

2.Every such alteration or addition shall be read and explained to the accused.

3.If the alteration or addition to a charge is such that proceeding immediately with the trial is



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not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge has been the original charge.

4.If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary.

5.If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

217. Recall of witnesses when charge altered.

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed -

a)to recall or re-summon, and examine



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with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

b)also to call any further witness whom the Court may think to be material.

13. He contended that on alteration of charge, the accused was given sufficient opportunity to recall and re-examine the witnesses but however, he did not avail his right and hence the ground of prejudice to the accused by alteration of charge does not attract and the same is unsustainable in the eye of law. In this regard, he drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Madhusudan and Others V. the State of Madhya Pradesh (Criminal Appeal No.1509 of 2010)***, wherein the Court has dealt with Sections 216 and 217 of Cr.P.C. The relevant portion of the judgment reads as under:

"21.The case materials nowhere indicate that the Court intended to alter the charge and it is unlikely that the altered charge was formally framed, read out and explained to the accused.



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A Court may alter or add to any charge before judgment is pronounced but when charges are altered, opportunity must be given under Section 217 of the Cr.P.C., both to the prosecution and the defence, to recall or re-examine witnesses in reference to such altered charges. More importantly, in case, charges are altered by the Court, reasons for the same must be recorded in the judgment."

14. In the aforesaid judgment, the Hon'ble Apex Court has obviously dealt with the essential factors for alteration of charges. They are as follows:

a)The altered charge was formally framed, read out and explained to the accused.

b)Opportunity to be given to the accused to reexamine witnesses in respect to the altered charge.

c)In case, charges are altered, reasons for the same must be recorded in the judgment.

15. It is predominant to note that in the present case on hand, the essential requirements have been complied with and the appellant has failed to exercise his right under Section 217 cr.p.c.



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for recalling the witnesses to re-examine, which cannot be a ground for acquittal and hence, the onus cannot be shifted on the prosecution.

16. The learned Government Advocate relied yet another decision of the Hon'ble Supreme Court in the case of ***Soundarajan Vs. The State rep. by the Inspector of Police, Vigilance Anti-Corruption, Dindigul*** reported in ***2023 SCC Online SC 424***, wherein the Court has held that as per Section 464 Cr.P.C., omission to frame a charge or any error in charge is never fatal, unless in the opinion of Court, a failure of justice has in fact thereby. The relevant portion of the decision reads as under:

"15. Under [Section 464](#) of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6th August 2004 and the subsequent alleged demand and acceptance on 13 th August 2004. There is no



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doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal."

17. Moreover, he submitted that the appellant was well aware of the bribe amount received by him from the de-facto complainant. In regard to minor contradictions, the learned Government Advocate relied on a judgment of the Hon'ble Apex Court in the case of ***Rajendra @ Rajappa and Others V. State of Karnataka*** reported in ***2021 (6) SCC 178*** in which it has been held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. The relevant portion of the order reads as under:

"18.This Court, in the case of [Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra](#)⁵, has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial. It is



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held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to



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reject the whole of the testimony of such witness.

18. Furthermore, he contended that there is no whisper or contradictions in respect of the presence of the appellant during the said bribe transactions which were substantiated by both PW2 and PW3. Hence submitted that the trial Court on a proper appreciation of evidence, had found the appellant guilty of the offence under Section 12 of PC Act and sentenced him to undergo punishment as stated earlier which warrants no interference.

19. On a bare perusal, it is seen that the appellant herein is a private driver to the first accused. It is pertinent to note that as per the instructions of his employer, he had received the amount from the de-facto complainant without any conscious and there is also no evidence to substantiate that A2 was aware of the said bribe transaction, hence presumption under Section 20 of PC Act does not attract against him at all. The learned counsel for the appellant argued that the appellant was not permitted to cross examine the prosecution witnesses on the new charge.



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20. At this juncture, it is relevant to refer to Rohtas's case as stated supra, wherein the Hon'ble Apex Court has held as follows:

"17.This does not, however, imply that Courts can not alter the charge and seek the aid of [Section 34](#) IPC (if there is common intention), or that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. [Sections 211 to 224](#) of CrPC which deal with framing of charges in criminal trials, give significant flexibility to Courts to alter and rectify the charges. The only controlling objective while deciding on alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy. The emphasis of Chapter XVII of the [CrPC](#) is thus to give a full and proper opportunity to the defence but at the same time to ensure that justice is not defeated by mere technicalities. Similarly, [Section 386](#) of CrPC bestows even upon the appellate Court such wide powers to make amendments to the charges which may have been erroneously



framed earlier. Furthermore, improper, or non-framing of charge by itself is not a ground for acquittal under [Section 464](#) of the CrPC. It must necessarily be shown that failure of justice has been caused, in which case a retrial may be ordered.

21. In reference to yet another decision i.e., Bhimanna's case as stated supra, the Hon'ble Supreme Court has held as under:

25. Further the defect must be so serious that it cannot be covered under [Sections 464/465](#) Cr.P.C., which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the charges, has led to a failure of justice, this Court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts



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sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).

26. This Court in *Sanichar Sahni v. State of Bihar*, AIR 2010 SC 3786, while considering the issue placed reliance upon various judgments of this Court particularly in *Topandas v. State of Bombay*, AIR 1956 SC 33; *Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116; *Fakhruddin v. State of Madhya Pradesh*, AIR 1967 SC 1326; *State of A.P. v. Thakkidiram Reddy*, AIR 1998 SC 2702; *Ramji Singh & Anr. v. State of Bihar*, AIR 2001 SC 3853; and *Gurpreet Singh v. State of Punjab*, AIR 2006 SC 191, and came to the following conclusion :

"27. Therefore,..... unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory." A similar view has been reiterated in *Abdul Sayeed*



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v. State of Madhya Pradesh, (2010) 10 SCC 259.

27. In *Shamnsaheb M. Multtani v. State of Karnataka*, AIR 2001 SC 921, this Court explained the meaning of the phrase 'failure of justice' observing that the superior court must examine whether the issue raised regarding failure of justice is really a failure of justice or whether it is only a camouflage. The court must further examine whether the said aspect is of such a nature, that non- explanation of it has contributed to penalising an individual, and if the same is true then the court may say, that since he was not given an opportunity to explain such aspect, there was 'failure of justice' on account of non compliance with the principles of natural justice. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any situation of a case.

28. The court must endeavour to find the truth. There would be 'failure of justice' not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that



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the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide: [Nageshwar Sh. Krishna Ghobe v. State of Maharashtra](#), AIR 1973 SC 165; [State by Police Inspector v. T. Venkatesh Murthy](#), AIR 2004 SC 5117; [Rafiq Ahmed @ Rafi v. State of U.P.](#), AIR 2011 SC 3114; and [Rattiram & Ors. v. State of M.P. through Inspector of Police](#), AIR 2012 SC 1485).

22. It is also relevant to cite Chandra Pratap Singh's case as stated supra, where it has held that the principles of natural justice require appellate Court to put the accused to notice of the charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges. The



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relevant portion of the order reads as under:

13. In view of the wide powers conferred by [Section 386](#) of Cr.PC, even an Appellate Court can exercise the power under [Section 216](#) of altering or adding the charge. However, if the Appellate Court intends to do so, elementary principles of natural justice require the Appellate Court to put the accused to the notice of the charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges. Unless the accused was put to notice that the Appellate Court intends to alter or add a charge in a particular manner, his advocate cannot effectively argue the case. Only if the accused is put to notice by the Appellate Court that the charge is intended to be altered in a particular manner, his advocate can effectively argue that even the altered charge was also not proved. For example, in the present case, it was necessary for the Appellate Court to put the appellant to notice that it intended to convict him with the aid of [Section 34](#) of IPC, for which a charge was not framed. We may add here that the Court can give the notice of the proposed alteration or addition of the charge even by orally informing the accused or his advocate when the appeal is being heard. In a given case, the Court can



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grant a short time to the advocates for both sides to prepare themselves for addressing the Court on the altered or added charge.

23. The aforesaid decision is self explanatory. In the case on hand, the appellant has not been provided to re-examine the witnesses after alteration of charge. It is also to be noted that nowhere it has been proved by any of the witnesses/prosecution that he was aware of the bribe transaction. In view of the same, the appeal deserves to be allowed.

24. For the foregoing reasons, the Criminal Appeal stands allowed. Consequently, the conviction and sentence awarded to the appellant by the trial Court in Spl.C.C.No.37 of 2014 dated 08.02.2019, is hereby set aside. The appellant is acquitted of all charges levelled against him. The fine amount, if any paid, is directed to be refunded. The bail bonds executed, if any, shall stand terminated.

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Index: Yes
NCC : Yes
Order: Speaking

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To

- 1.The Special Court
for Prevention of Corruption Act Cases,
Villupuram.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram.
- 3.The Public Prosecutor,
Madras High Court, Chennai.