IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2024

CORAM : MR.JUSTICE N.SESHASAYEE

Crl.A.No.338 of 2018

D.Selvaraj ... Appellant

Vs.

State by Deputy Superintendent of Police
Vigilance and Anti Corruption
Erode
(Crime No.5/AC/2004/ER) ... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C., against the judgment of the Special Court for offences Under Prevention of Corruption Act at Tiruppur in Special C.C.No.3 of 2015, dated 07.06.2018.

For Petitioner : Mr.R.C.Paul Kanagaraj

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

JUDGMENT

This appeal is preferred by the accused / appellant challenging the conviction and sentence imposed on him by the Special Court for Trial of

Cases under Prevention of Corruption Act (Chief Judicial Magistrate), Tiruppur in Spl.C.C.No.03 of 2015 for offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution case unfolds as below :

a) A certain Muthusamy had some properties and also had atleast three electricity service connections (which are relevant for the present case), of which, two service connections are for his agricultural activities and one again relates to his poultry business.

b) Muthusamy died on 04.02.1993, and before his death, he was involved in a civil suit in O.S.No.41/1991 for partition and the material details of civil suit are not very germane.

c) While so, on 01.03.2004, P.W.2, the defacto complainant approached the Office of the Executive Engineer, TNEB with three separate applications for transfer of service connection from his father's name to his name, and met the appellant herein, who at the relevant time was working as an Assistant [Accounts Incharge in the said office] and handed over those applications. He also directed payment of necessary charges which P.W.2 had paid.

d) On that very date (01.03.2004), the appellant herein had demanded Rs.3,000/- as bribe. After some bargaining by P.W.2, the bribe sum was reduced to Rs.1,500/-, and further reduced to Rs.750/-.

e) Thereafter on 03.03.2004, the appellant is alleged to have telephonically contacted P.W.2 and reminded about the demand. It is in these circumstances, on 08.03.2004, P.W.2 preferred Ex.P1 complaint before the respondent police, receiving which, P.W.14, registered Ex.P16 F.I.R.

f) On 09.03.2004, P.W.14, who is also the trap laying officer had organised a trap proceedings, and after completing the pre-trap procedures, he descended at the Office of the Executive

Engineer at Kangeyam along with P.W.2, the defacto complainant, P.W.3, one of the official witnesses, one Chandrasekar, the other official witness. At about 11.20 a.m, P.W.2 met the appellant along with P.W.3. And the appellant directed P.W.2 to make certain payments in the office counter and required him to produce the receipts for the same. P.W.2 made those payments and he was soon back before the appellant.

g) The time was 12.15 in the noon and the appellant had made his demand again for the bribe money. P.W.2 would then pay the bribe money and it was received and accepted by the appellant, and that is how the appellant gently walked into the trap laid by P.W.14. Soon P.W.14 arrived at the scene and completed the remainder part of the trap procedure.

h) The investigation was taken over by P.W.15. Midway through his investigation, he was transferred, and P.W.16 took over the investigation. He recorded the statements of witnesses, forwarded such necessary materials which were concluded during the trap proceedings to the Forensic Science Laboratory and obtained a report. And finally laid his final report for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Charges were duly framed against the appellant and the learned Special Judge proceeded to hold a trial for said charges. During trial, the prosecution examined P.W.1 to P.W.16, and marked Ex.P1 to Ex.P29, and produced M.O.1 to M.O.7. After appreciating the evidence, the trial Court found the appellant guilty of both the charges and sentenced him as below :

Case No.	*Offences*	*Sentences*
Spl.C.C.No. 3 of 2015	Section 7 of Prevention of Corruption Act	Two years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months
	Section 13(2) r/w.Sec.13(1)(d) of Prevention of Corruption Act	Five years rigorous imprisonment with fine of Rs.1,000/-, in default to undergo simple imprisonment for six months

The sentences are directed to run concurrently. This judgment of the trial Court is now under challenge.

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

- The appellant at the relevant time was working as an Assistant in the Accounts Office of the erstwhile TNEB. His immediate superior officer was P.W.5, and P.W.10 was the Assistant Accounts Officer, who was superior to both P.W.5 and the appellant. At the relevant time, TNEB had three separate offices, one was in Old Fort Road. The other office was called Kangeyam North, which is located in a separate locality and the third office was in Agraharam Street. Both P.W.10, P.W.5 and the appellant were all working in the office at Old Fort Road.

- While so, the Government came out with a Government Order directing refund of certain amounts which were earlier received from the consumers of electricity for agricultural purposes. The P.W.2's father had three service connections, and if he were alive, he too would be entitled to receive the refund of the aforesaid amount. Since P.W.2's father had passed away, he necessarily had to change the service connection in his name. Indeed, he also had a Civil Court decree to support it.

- It is in this circumstances, P.W.2 visited the Old Fort Office of TNEB with his applications for transfer of service connection from his father's name to his name. The applications were given on 03.03.2004. However, these applications were incomplete since the appellant had not enclosed certain material papers, and hence he was required to re-submit the papers. The papers were accordingly re-submitted. As per the procedure, advice slip for remittance of necessary charges as prescribed for transfer of service connection has to be issued by P.W.10, the Assistant Accounts Officer. The amount, however, has to be paid not at that very office, but in the office of TNEB at Kangeyam North.

- P.W.5 in his testimony has deposed that at the relevant time the office of the official who was incharge of the name transfer was vacant and P.W.5 had been orally directed to discharge the said responsibility. P.W.5 further concedes in his cross examination, that he did not know the job, therefore, he had required the assistance of the appellant herein to discharge his duties vis-a-vis the transfer of service connection.

- However, believing that the charges which are required to be paid for the service connection or atleast one of the service connections is bribe money, P.W.2 had hurried to give a complaint to the respondent. P.W.14, the Trap Laying Officer too had made preparations to trap the event. P.W.2 in his cross examination had conceded that in the morning of 09.03.2004, the day when the trap was laid, P.W.2 along with the official witness for the trap viz. P.W.3, had visited the office of P.W.10, collected the advice slip and had made remittance at Kangeyam North Office of TNEB. Therefore, at the first instance there was neither a demand for bribe money nor any payment or receipt of bribe money. P.W.2 also concedes that on that day there was hectic crowd in the office of P.W.10, as several agriculturalists had gathered there for obtaining refund of the money which they are entitled to receive in terms of the Government Order. P.W.5 would testify that many people had come that day and the crowd included many who required transfer of service connection in their names. Turning to all critical aspect of payment of bribe money, P.W.2 would depose that he did not remember whether the money was paid to P.W.5 or to the appellant, but he makes a categorical statement that he who had received the money had made a statement that the money would be paid at the North office. This would imply that the appellant herein had received the money only with a promise to deposit the same in the North Office. It further indicates that notwithstanding the deposit of Rs.750/- vide Ex.P6 at the North Office, which is the official charges payable for transfer of one of the connections, P.W.2 had conceded it and still required the appellant to pay the same. Atleast during his cross examination, he had explained it. Therefore, irrespective of whether it was a mistake on the part of P.W.2 to have required the appellant to deposit Rs.750/- on his behalf in the North office, or whether he deliberately did it with some ulterior motive, the fact remains the money was paid not as bribe money, but as charges payable for transfer of one of the electricity service connections in the name of the P.W.2, and the testimony of P.W.5 amply corroborates the version of P.W.2.

- Taking the testimony of P.W.5 together with P.W.2, it becomes amply evident that there has never been a demand for bribe money nor the money was paid and received as bribe money.

5.Per contra, Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) submitted that when payment of tainted money and its receipt are established, the burden becomes the accused person's to explain that the money he had received is not bribe money. He pressed into service under Section 20 of the Prevention of Corruption Act, 1988, which creates a presumption in favour of the prosecution.

6.On weighing rival submissions, this Court considers that the presumption under Section 20 of the Prevention of Corruption Act, 1988 stands amply rebutted. After all, a person accused of an offence U/s.7 of Prevention of Corruption Act, 1988, only needs to establish so much of fact which may improbabilise the case of the prosecution, and whenever an improbability could be created by the accused, then there is adequate material to rebut the presumption U/s.20 of the Prevention of Corruption Act, 1988.

7.Here is a scenario where this Court finds P.W.2 making ambivalent statements that when he paid the money, the appellant promised to deposit the same in the North office on that very date. When P.W.2 wobbles, the prosecution case shakes and the presumption under Section 20 of Prevention of Corruption Act, 1988 stands rebutted.

8. In the result, the above Criminal Appeal stands allowed. The conviction and sentence imposed by the learned Chief Judicial Magistrate, (Trial of Cases under Prevention of Corruption Act), Tiruppur in Spl.C.C.No.3 of 2015 on 07.06.2018 is hereby set aside. The appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the appellant shall stand cancelled and the fine amount, if any paid by the appellant, shall be refunded to him.

19.09.2024

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Index : yes / no
Neutral Citation

N.SESHASAYEE, J.

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To

1.The Special Court
for offences Under Prevention of Corruption Act
Tiruppur

2.Deputy Superintendent of Police
Vigilance and Anti Corruption
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