



Crl. A. No.862 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.862 of 2016

State rep. by
The Public Prosecutor
High Court, Madras - 600 104
[V&AC, Salem Crime No.5/AC/2005]

... Appellant

Vs.

1.K.Sivalingham
2.R.S.Velmurugan

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code to allow the appeal and set aside the judgment of acquittal of the respondents (A1 & A2) passed by the Court of Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem in Spl.C.C. No.31 of 2014 dated 29.02.2016, convict the respondents/accused (A-1 & A-2) pass sentence against him in accordance with law.

For Appellant : Dr.C.E.Pratap
Govt. Advocate (Crl.Side)
Assisted by Ms.J.R.Archana

For Respondents : Mr.S.Shanmuga Velayutham
Assisted by Mr.T.Vijayaraghavan for R1
Mr.R.Nalliyappan for R2



JUDGMENT

Challenging the judgment of the Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem in Spl.C.C. No.31 of 2014 dated 29.02.2016, acquitting both the accused persons against whom the court has framed charges under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, the prosecution has preferred this appeal.

2. The facts may be briefly stated as below:

- PW3 was working as Headmaster at Elementary School, Singipuram, Vazhapadi Taluk. On 31.10.2003 he retired from his service. However, vide Ext.P3 and in terms of G.O. Ms. No.1643 dated 27.10.1998, he was re-employed till the end of the academic year, i.e. from 01.11.2003 to 31.05.2004. PW3 had been paid all his terminal benefits pursuant to his superannuation, but he was not paid salary for the re-employment period.
- While so, on 12.04.2005 at about 8.30 p.m in the night, PW3 is stated to have met A2 accidentally and enquired about his pending salary bill. A2 would then require him to pay one month salary as bribe for him to pass the bill.
- Subsequently on 22.04.2005, PW3 met A1 at his office and according to the prosecution, A1 made an identical demand but later on negotiation, the



bribe amount was reduced to Rs.500/- each for A1 and A2. A2 was not in the office on that date. This is the second demand made for bribe.

- On 25.04.2005 at around 4.30 p.m, PW3 again visited the office of A1 and A2 and this time, he found both of them together and they again reiterated the earlier demand of Rs.500/- each for clearing the papers of the PW3 and this is the third demand.
- Wasting no time, on 26.04.2005 at around 4.30 p.m, PW3 approached the appellant police with Ext.P4, complaint, receiving which a FIR came to be registered in Crime No.5/AC/2005 against A1 and A2 for offence under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act. Since it was late in the evening, the Investigating Officer chose to lay a trap of A1 and A2 on the following day.
- The trap was designed by the investigating officer and he along with PW3 and two independent witnesses, namely PW4 and one K.R.Rajendran and went to the office of A1 at around 12 noon. As was planned earlier, PW3 paid Rs.500/- in 5 notes of Rs.100/- denomination. Needless to state these five notes were coated with naphthalene powder. A2 was not there in the office at that time and therefore, no money was paid to A2. Soon signals were made to the investigating officer, who entered the premises subjected A1 to Sodium Carbonate test, which proved positive and the 5 x 100



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rupees notes were seized and the numbers were tallied with the numbers denoted in the mahazar prepared prior to the trap. After completing the investigation, the prosecution laid final report. During trial, prosecution examined PW1 to PW14 and marked Exts.P1 to P36 were marked and material objects MO1 to MO9 were produced. After appreciating the evidence before it, the trial court, refused to believe the version of prosecution to establish the demand and further proceeded to hold that prosecution has not established the guilt of the accused beyond all reasonable doubts.

This judgment is now under appeal.

3. The learned Government Advocate (Crl.Side) appearing for the prosecution submitted that the triple criteria which was *sine qua non* are well established by the prosecution which would immediately bring into application the presumption under Section 20 of the Prevention of Corruption Act. Ext.P4, complaint narrates the three demands made and this is followed by the trap where bribe amount was paid by PW3 and was received by A1. PW4, the witness who accompanied PW3 has spoken very cogently in support of the prosecution. This would imply that there has been a demand of bribe money and the same was received by A1. Here



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the trial court has not explained what mode the prosecution is required to establish the guilt of the accused persons more so, when Section 20 is there to aid the prosecution.

4. An elaborate appreciation of the prosecution case is now cut short by a statement made by the learned senior counsel appearing for A1, who informed the court that A1 has already passed away on 30.05.2024 and has circulated a Memo today. Necessarily, the charges against him abates.

5. So far as A2 is concerned, only PW3 has made a self-serving statement about certain demand at the first instance and on the third instance but no money was given and received by A2. Therefore, the prosecution is not able to establish the triple criteria necessarily to establish the guilt of A2 for the offence, he was charged with. Necessarily, the appeal as against A2 fails.

6. The appeal is accordingly disposed of.

02.09.2024

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Index : Yes / No

Neutral Citation : Yes/No

To



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under the Prevention of Corruption Act), Salem

2.The Public Prosecutor, High Court, Madras.

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N.SESHASAYEE, J.



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