



Crl.A.No.189 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.08.2024
Delivered on	02.09.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.A.No.189 of 2019

M.Haridoss

... Appellant

Vs.

State represented by
The Inspector 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 on the appellant in Special Case No.27 of 2014 passed by the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram dated 21.03.2019 and to allow this appeal.

For Appellant : Mr.M.S.Saravanakumar

For Respondent : Mr. S.Santhosh, GA



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J U D G M E N T

The order of conviction and sentence imposed on the appellant herein by the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram dated 21.03.2019 in Spl.C.No.27 of 2014 dated 21.03.2019 for the commission of the offences under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 (for the sake of convenience-PC Act), is put under challenge in the present appeal.

2. The gist of the case is as follows:

2.1. The defacto complainant wanted to get passport for his elder son Satyamurthy. For which, as per the Court direction, he applied for birth certificate in the Taluk office, Villupuram on 06.09.2011 and on instructions, approached the Village Administrative Officer/the appellant herein on 18.11.2011 for the same. It is alleged that for registration of the birth certificate, the accused demanded a sum of Rs.1,400/- and on negotiation, the illegal gratification was reduced to Rs.1,100/- and on 21.11.2011, he approached the appellant herein wherein it was alleged that the accused again reiterated the same and obtained the amount from



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the defacto complainant as illegal gratification and had committed the offence under Section 7 of PC Act. Since the accused, who is a public servant had abused his official position by demanding and accepting the amount of Rs.1,100/- as illegal gratification, he has committed the offence under Sections 13(2) r/w.13(1)(d) of PC Act. On filing of the final report by the prosecution, the same was taken on file by the learned Chief Judicial Magistrate, Villupuram and charges were framed against the accused under Sections 7, 13(2) r/w. 13(1)(d) of PC Act.

2.2. During trial, on the side of the prosecution, PW1 to PW10 have been examined as witnesses and documents P1 to P22 as exhibits and MO1 to MO5 as material objects were marked whereas on the side of the defence, DW1 and DW2 have been examined and no documents were marked.

2.3. On careful examination of the witnesses and analysis of the oral and documentary evidences, the trial Court found the accused guilty of the offence, convicted and sentenced him to undergo 4 years R.I. and to pay a fine of Rs.1000/- in default to undergo 3 months S.I. under Section 7 of PC Act and to undergo 5



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years R.I. and to pay a fine of Rs.5000/-, in default to undergo 6 months S.I. under Section 13(2) r/w.13(1)(d) of PC Act and ordered the same to run concurrently.

3. Aggrieved over the same, the appellant herein had preferred the present Criminal Appeal.

4. Heard Mr.S.Saravanakumar, learned counsel for the appellant and Mr.S.Santhosh, learned Government Advocate appearing on behalf of the respondent/State.

5. The learned counsel for the appellant submitted that sanction order/Ex.P8 was issued belatedly on 08.10.2011 i.e., with a delay of 11 months and the same was issued considering the non existing documents without application of mind. He submitted that the charges framed have to be substantiated with proper evidence and it is a settled principle of law that mere suspicious or mere inference, the accused cannot be convicted. He further argued that there was no material in regard to the application/Ex.P15 dated 18.11.2011 made by PW1/defacto complainant and receipt of the same by the appellant. He also stated that there was no whisper



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about recovery of Ex.P15 other than Exs.P10 & P17 from VAO and Taluk Office which creates suspicion as it was stated that the amount was demanded by the appellant to the defacto complainant while giving the application, which was also not mentioned in the FIR. He also contended that the application mentioned by the prosecution is a concocted one as the same was not received by the appellant and there is contradictions in the statements of PW1, PW3 and PW9 in respect of Ex.P15.

6. The learned counsel submitted that there was no material to prove that the application was given by PW1 and hence, the charge of demand and acceptance does not attract as against the appellant. It is pertinent to note that the appellant have no power either to registration or issuance of birth certificate, which was evident from the deposition of PW6 in his cross examination. He also contended that the appellant is not a competent authority neither to register nor issue birth certificate and hence, the concept of demand and acceptance of illegal gratification does not arise. He drew the attention of this Court to the decision in the case of ***K.Shanthamma V. State of Telangana*** reported in **2022 SAR (Cri.) 403**, wherein the Telengana High Court has held that when



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demand of illegal gratification was not proved which was sine quo non for establishing an offence under Section 7 of the Prevention of Corruption Act, 1988, the case would not be established. The relevant portion of the order reads as under:

*"7. ... The offence under [Section 7](#) of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under [Section 7](#) of the PC Act. In the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:
(2015) 10 SCC 152 "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7 and 13\(1\)\(d\)\(i\)](#) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail.*

Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand



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for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Section 7](#) or 13 of the Act would not entail his conviction thereunder.” (emphasis added).”

7. Furthermore, he pointed out that in the cross examination, PW9/TLO had agreed to the suggestion that the complainant had given the amount voluntarily to the appellant and hence, the same proves no demand and the presumption under Section 20 of PC Act does not attract.

8. Continuing his argument, he canvassed that the alleged trap is highly doubtful and creates suspicion as there are material contradictions in the statements of PW1 and PW3 in respect of preparation of the complaint. He also contended that there are several contradictions and omissions in regard to shirt, pattern of shirt, usage of hands while counting the money, variations in phenolphthalein solutions, bribe received in the presence of PW3, recovery of amount, cell phone and application and parking place of police jeep etc. He also submitted that due to personal enmity and vengeance against the appellant, PW1 has roped him in a false case



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and the trap is highly doubtful. Moreover, he submitted that the birth certificate has already been registered on 23.09.2011 itself, which proves that there is no question of demand by the appellant for discharging his duty. Thus, he pointed out the contradictions and infirmities in the case of the prosecution and prayed that the conviction and sentence passed by the trial Court ought to be set aside and to allow the appeal.

9. Per contra, 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 obtainment of an illegal gratification may be made by a Court of law



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by way of an inference only when the basic 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. He argued that the accused has played a vital role in the process of registration. In regard to minor contradictions, the learned Government Advocate relied on the 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



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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 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



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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 reject the whole of the testimony of such witness.

12. He further submitted that there are no significant contradictions between the testimonies of PW1, PW3 and PW9 and the demand, acceptance and recovery of the case have been proved through PW1, PW3 and PW9 in a proper manner.

13. He also drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Sita Soren V. Union of India*** reported in ***2024 SCC Online SC 229***, wherein the Court has held that obtaining, accepting or attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. The



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relevant portion of the decision reads as under:

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"Under [Section 7](#) of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The first explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained."

14. In furtherance, he submitted that the accused without liberating the information about registration of birth certificate of Satyamurthy to PW1, had demanded and accepted the bribe amount of Rs.1,100/- and had committed the offence under Section



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7(e) of the PC Act. He also submitted that the trial Court after analysing the evidences in a right perspective manner found the accused guilty and sentenced him as stated earlier, which warrants no interference.

15. I have carefully considered the rival submissions made by the respective counsels and also perused the materials available on record.

16. At the outset, the legal position which emerges regarding appreciation of evidence in a trap, are as under:-

a)To succeed in such a case, the prosecution is obliged to prove the demand of bribe before and at the time of trap, its acceptance and the recovery of tainted money.

b)The demand can be proved by testimony of the complainant, as well as from the complaint made by him and other witnesses, if proved in accordance with law and if it is corroborated in material particulars.

c)A presumption as to the demand of bribe can



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also be drawn if the tainted money i.e., the money tendered as bribe money is recovered from the possession of the accused, which presumption, of course, is rebuttable under Section 20 of the PC Act.

d)If the accused gives some defence that can be scrutinized by the test of preponderance of probability, while the prosecution must prove its case beyond all reasonable doubt.

17. On a careful perusal, it is seen that the birth certificate of Satyamurthy was already registered on 23.09.2011. The learned counsel for the appellant submitted that only on the instruction of Tahsildar's office, PW1 approached the appellant herein and it is alleged that at that time, the demand and acceptance was done but the same was not proved by the prosecution through the evidence of revenue officials namely, PW2, PW4, PW6 and PW8. It is crystal clear that the birth registration of PW1's son was already registered on 23.09.2011 and therefore, there is no question of demand and acceptance of illegal gratification by the appellant herein and also that the trial Court had erred in considering the deposition of DW1 and DW2 in which they had deposed that the appellant is innocent



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and due to previous enmity, the appellant has been falsely implicated in this case. It is relevant to point out that PW1 was unable to pay illegal gratification but in contra, it was seen that MO2 currency notes were owned by PW1 and handed over to the police. It is to be stressed that as per the dictum laid in several cases of the Hon'ble Apex Court as well as other High Courts, it is considered that failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Section 7](#) or 13 of the Act would not entail his conviction thereunder.

18. The Hon'ble Supreme Court in the case of ***State of Kerala and another V. C.P.Rao*** reported in ***2011 (6) SCC 450***, has held that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused was reiterated.

19. In yet another decision of the Hon'ble Supreme Court in ***G.V.Nanjundiah Vs. State*** reported in ***1987 Supp SCC 266*** has laid down that the allegation of bribe taking should be considered along with other material circumstances and that demand has to be



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proved by adducing clinching evidence.

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20. In **V.Venkata Subbarao Vs. State** [AIR (2004) SC 1728], wherein it has been held that the presumption of demand and acceptance under Section 20 of the PC Act cannot be raised, when the demand by the accused has not been proved by the prosecution.

21. At this juncture, it is relevant to note that the sanction officer/PW2 has stated in his evidence that Ex.P15/application dated 18.11.2011 was not seen by him and also that PW1 has not given any application to the appellant. It is predominant to note that the appellant does not have any power with regard to registration of birth certificate and issuance of certificate as the competent authority is Tahsildar to issue the same. As the birth certificate was registered on 23.09.2011 itself, then there is no question at all for demand and acceptance of illegal gratification by the appellant herein from PW1. In view of the above facts, it is obvious to understand that the appellant has not made any demand. Thus, this Court is of the view that the charges framed against the appellant



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have not been proved by the prosecution with clinching evidence and hence, the conviction and sentence passed by the trial Court without proper appreciation of the case is liable to be set aside.

22. For the foregoing reasons and in the light of the decisions of the Hon'ble Supreme Court as stated supra, the Criminal Appeal stands allowed. Consequently, the conviction and sentence imposed upon the appellant by the trial Court in Spl.C.No.27 of 2014 dated 21.03.2019, 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.

02.09.2024

Index: Yes/No
NCC : Yes/No
Order: Speaking/Non Speaking

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To

- 1.The Special Judge,
Special Court for PC Act cases,
Villupuram.
- 2.The Inspector of Police,
Vigilance & Anti-Corruption,
Villupuram.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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VIVEK KUMAR SINGH, J.

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JUDGMENT MADE IN
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