IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2024

CORAM : MR.JUSTICE N.SESHASAYEE

Crl.A.No.250 of 2019

R.Sekar ... Appellant

Vs.

State of Tamilnadu
Represented by Inspector of Police
Vigilance and Anti-Corruption Wing
Villupuram
Crime No.2/2011 ... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C., to call for the records relating to the proceedings in Spl. Case No.11 of 2013 on the file of the Court of Special Court for Prevention of Corruption Act Cases, Villupuram and set aside the order of conviction dated 26.04.2019 and set the appellant at liberty.

For Petitioner : Mr.M.Devaraj

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

JUDGMENT

The appellant was a Firka Surveyor of Nemili Firka, and he now challenges the judgment of the Special Court for Prevention of Corruption Act Cases, Villupuram, in Special Case No.11 of 2013 for his conviction and sentence for offences U/s.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The sentence imposed on him reads as below:

Accused	***Offence***	***Sentence imposed***
Accused	U/s.7 of P.C. Act, 1988	R.I. for 4 years and a fine of Rs.1,000/- in default to undergo S.I. for 3 months.
	U/s.13(2) r/w 13(1)(d) of P.C. Act, 1988	R.I. for 5 years and a fine of Rs.5,000/- in default S.I. for 6 months.

2. The case of the prosecution runs as below:

- In February 2011, the appellant was working as a Firka Surveyor of Nemili Firka.

- Be that as it may, P.W.2 had applied vide Ext.P4 application to the Tahsildhar concerned for transfer of patta.

- In connection therewith, on 04.02.2011, P.W.2 is said to have met the appellant and the appellant demanded Rs.4,500/- as bribe money. This amount was later negotiated and was brought down to Rs.2,000/-. The appellant is said to have required P.W.2 to meet him on 09.02.2011.

- Unwilling to oblige the appellant's demand for bribe, P.W.2 approached the respondent with Ext.P2 - complaint, receiving which P.W.12, registered Ext.P22 - F.I.R. It was 9.00 a.m. when F.I.R was registered.

- P.W.12 initiated the pre-trap procedures and in the course of which he had entrusted 1 x Rs.1,000/- and 2 x Rs.500/-, all the three notes smeared with phenolphthalein powder with P.W.2, under Ext.P3 - Entrustment Mahazar.

- P.W.12 led his trap team which comprised besides him, P.W.2, P.W.3 and one Kathiravan. The trap team landed at the office of the appellant at 12.30 in the noon. As planned, the planted currencies were tendered to the appellant and he received it and kept it in his pocket. P.W.2 would now alert P.W.12, who would arrive at the scene of occurrence with the other shadow witness Kathiravan. He proceeded to conduct necessary tests as contemplated. The trap indeed was successful. He inter alia seized the planted currencies under Ext.P12 - seizure mahazar and completed the rest of the post trap procedures.

- ✔ The investigation was then taken over by P.W.13. He completed the investigation and laid the final report.

3.1 On taking cognizance of the offence on the police report, the trial Court framed charges against the appellant as indicated in the opening paragraph of the judgment and proceeded to try the appellant on those charges. During trial, the prosecution examined P.W.1 to P.W.13, marked Ext.P1 to Ext.P24 and produced M.O.1 to M.O.4. The appellant did not choose to produce any oral or documentary evidence.

3.2 On appreciating the evidence before it, the trial Court convicted the appellant and sentenced him as above. This appeal is directed against the said judgment.

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

a) P.W.1 who accorded sanction for prosecution U/s.19 of the Prevention of Corruption Act, 1988 did not apply his mind. Indeed, Ext.P1, the proceeding by which P.W.1 has granted sanction for prosecution does not enumerate the list of documents which he had perused. The tone and tenure of the proceedings only indicate that he has merely reproduced what the investigating agency has presented to him and Ext.P1 nowhere gives an impression that there had been an independent application of mind by P.W.1.

b) There never was a demand made by the appellant on 04.02.2011. Indeed, if there had been a demand on 04.02.2011, then P.W.2 would not have taken another five days to complain about it on the very date of trap. In fact, P.W.2 in his cross examination would depose that when he tendered money pursuant to execution of the trap, the appellant did not ask for the bribe money but only he had tendered it voluntarily. When there is no demand, then one of the limbs of the triple criteria required to establish an offence U/s.7 of the Act, fails. When there is no offence

U/s.7 of the Act, necessarily the appellant deserves to be acquitted.

c) Admittedly, P.W.2 had only applied for transfer of patta which is not part of the duty of the appellant. In other words, when the appellant is not in a position to officially do any favours to P.W.2, then whatever the prosecution alleges falls outside the purview of Section 7 of the Act.

5.Per contra, Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) submitted that the charges U/s.7 and Section 13(2) r/w 13(1)(d) of the Act were framed as two independent charges. Therefore, mere failure of charge U/s.7 of the Act does not *ipso facto* rescue an accused person of charge framed U/s.13(2) of the Act.

6.When money is tendered and received, a demand for the same has to be presumed. Once bribe money is accepted, then presumption U/s.20 of the Prevention of Corruption Act, 1988 will step in. This would imply that in all cases where money is paid and received, a presumption of demand has to be made which in turn will invoke the application of the presumption U/s.20 of the Act, and the accused person would be under an obligation to rebut the same with convincing explanation. The present appellant's efforts is not adequate enough to rebut the presumption U/s.20 of the Act. Reliance was placed on the ratio laid in ***Neeraj Dutta V. State (NCT of Delhi)*** [(2022) 5 SCR 104)].

7.Rival submissions are carefully weighed. There is merit on the submissions of both the sides. It is beyond doubt or debate that to constitute an offence U/s.7 of the Prevention of Corruption Act, 1988, the prosecution must produce foundational facts which may enable it to invoke the presumption U/s.20 of the Prevention of Corruption Act, 1988. As rightly argued by the learned Prosecutor, where money is paid and received, a demand for money must have to be inferred, since no demand for illegal gratification will be made with public notice by the offender.

8.Turning to the facts of the case, it is not so much whether on 04.02.2011 the appellant had demanded any bribe. All it matters is whether on 09.02.2011 he had accepted the bribe money given. Here the testimony of P.W.2 indicates that, before he tendered Rs.2,000/- as bribe money, the appellant neither enquired about the money nor demanded it. It would therefore be inferred that

P.W.2 had volunteered to tender money and this indeed was accepted by the appellant. Now, with no demand for money adequately established and nothing to indicate that the intent of the bribe giver and the alleged bribe taker were on the same frequency, it is nigh difficult to conclude that appellant had received the money with an intent to receive the same as a bribe money. Necessarily, this Court has to hold that no offence U/s.7 of the Prevention of Corruption Act, 1988, is made out.

9.The game does not stop here. The appellant still has to explain as to why he received the money when he is not under any legal obligation or duty to receive it. This falls squarely U/s.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The evidence on record does not provide any clue to this Court to find that this explanation is adequate enough to rebut the presumption U/s.20 of the Act, vis-a-vis the charge U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

10. To conclude, this Court partly allows the appeal and acquits the appellant for charge U/s.7 of the Prevention of Corruption Act, 1988, but confirms the conviction of the trial Court for offence U/s.13(2) r/w 13(1)(d) of the

Prevention of Corruption Act, 1988.

11.Turning to sentence part of it, this Court finds that the sentence of five (5) years R.I. is on the higher side and reduces it to one (1) year S.I. and confirms the fine amount of Rs.5,000/-, in default to undergo one (1) month S.I. The term he had already spent in prison either during investigation or after the judgment of the trial court until his sentence is suspended by this Court is directed to be adjusted against the term of imprisonment this Court now imposes U/s.428 Cr.P.C. The appellant is required to surrender before the trial Court within a period of two (2) weeks from the date of receipt of a copy of this judgment and on his failure, the trial Court is directed to secure the appellant. No costs.

19.10.2024

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Index : yes / no
Neutral Citation

1.The Special Court for Prevention of Corruption Act Cases,
Villupuram

2.The Public Prosecutor, High Court of Madras

N.SESHASAYEE, J.

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