IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM : JUSTICE **N.SESHASAYEE**

Crl.A.No.282 of 2019

V.Radhakrishnan ... Appellant / Accused

Vs.

State
The Inspector of Police
Vigilance and Anti Corruption
Chennai City - 1 Detachment
[Cr.No.20/AC/2008) ... Respondent / Complainant

Prayer : Criminal Original Petition filed under Section 373(2) Cr.P.C., praying to call for the records in Spl.C.C.No.13 of 2010 dated 03.05.2018 on the file of the Special Judge / Chief Judicial Magistrate, Chengalpattu, and set aside the same.

For Appellant : Mr.N.Manokaran

For Respondent : Dr.C.E.Pratap
Government Advocate [Crl. Side]

JUDGMENT

This appeal is directed against the judgement of the Special Court for V & AC Cases (Chief Judicial Magistrate Court), Chengalpattu in Spl.Case No.13/2010, convicting the appellant for offences under Section 7 and Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act. The appellant was sentenced to three years simple imprisonment (2 counts) and a fine of Rs.5,000/- (2 counts), in default to undergo two months simple imprisonment, and the sentences imposed are directed to run concurrently.

2. The facts are as below:

a) P.W.2, the de-facto complainant was working as a Secretary in Indian Drugs and Pharmaceuticals Limited Employees Cooperative Thrift and Credit Society, Chennai (hereinafter 'IDPL Society' in short). On 27.11.2007, he resigned and joined as the Secretary of Kancheepuram Central Cooperative Bank (henceforth KCCB) and was working at its branch office at Madipakkam .

b) P.W.2 was stated to be entitled to receive around Rs.5.0 lakhs towards his terminal benefits from IDPL Society. This amount was not disbursed to him. Therefore, P.W.2 made Ext.P4, application dated 09.12.2007 for payment of his terminal benefits, followed by Ext.P5, dated 12.01.2008, for obtaining two different categories of terminal benefits. He then followed it up with Ext.P6 and Ext.P7 reminders, both dated 23.03.2008 and 29.10.2008 respectively.

c) The appellant was working as the Special Officer in IDPL Society.

d) Be that as it may about a week before P.W.2 gave his Ext.P7 reminder, on 21.10.2008, he was alleged to have met the appellant for disbursing his terminal benefits, and at that time the appellant was said to have demanded Rs.50,000/- as bribe for disbursing the sum due to P.W.2. This according to the prosecution is the first demand.

e) It is after the above said meeting of P.W.2 with the appellant, on 29.10.2008, the former had given his Ext.P7 reminder. On the very next day (30.10.2008) IDPL issued Ext.P11 cheque for Rs.1,11,693/- to P.W.2, towards part payment of his terminal benefits. The cheque was singed by the appellant (special officer) as well as by P.W.11, who was the successor secretary to P.W.2 at the IDPL Society.

f) At 3.00 p.m., on 06.11.2008, and also at 3.00 p.m., on 07.11. 2008, the appellant was alleged to have made cellphonic calls to P.W.2 to his cell phone No.9444723902 to remind him of the bribe money of Rs.50,000/- that he had to pay. Indeed, in the second mentioned call on 07.11.2008, the appellant was alleged to have informed P.W.2 to pay the money to P.W.11.

g) Unwilling to pay the bribe money, on 07.11.2008 P.W.2 approached the respondent with his Ext.P2 complaint, receiving which P.W.12, the Trap Laying Officer (TLO) registered Ext.P19 FIR at around 4.00 p.m., on that date.

h) And P.W.12 began his pre-trap procedures and entrusted Rs.50,000/- (Rs.1,000/- x 50), all smeared with phenolphthalein powder to P.W.2 vide Ext.P3, entrustment magazar. And P.W.2 stayed over that night along with P.W.3 and one Ravichandran, both of whom are the shadow witnesses, in the office of Vigilance and Anti Corruption.

i) On 08.11.2008, the trap-team, which included P.W.3 left the office of V & AC and reached the branch office of KCCB at Madipakkam at 8.15 a.m. in two vehicles. According to P.W.2, the TLO had dropped P.W.2 and P.W.3 some 50 feet from the office of KCCB. As planned on the previous day, P.W.2 was ready with the planted cash along with P.W.3, and the former took position inside his office. P.W.11, (who to remind, the successor officer of P.W.2 at IDPL) arrived at the office of KCCB. It was around 8.45 a.m.. As planned, when P.W.11 met P.W.2, the latter gave the planted currencies to the former. Soon TLO was alerted and he arrived inside the office of KCCB. And according to P.W.3, at that time P.W.11 was in the process of starting his moped. The TLO with his two vehicles did not choose time enough to trap P.W.11 right at the time when the latter received the planted money.

j) According to P.W.12, he intercepted P.W.11, at about 9.00 a.m., near St.Thomas Mount police station. And, the cash was recovered from P.W.11 under Ext.P8 seizure mahazar. In the seizure mahazar the TLO had recorded that P.W.11's statement that the latter was carrying the money for the appellant.

k) Curiously enough the trap team along with P.W.11 was waiting at the office of the Special Branch CID, Chengalpet East at Tambaram till 3.00 p.m., in the evening. Then the TLO along with P.W.11 proceeded to Tambaram Cooperative Bank where the appellant was then holding an enquiry as an Enquiry Officer as per his pre-set schedule.

l) Therefore, the TLO chose to set up P.W.11 (and not P.W.2) and sent him to the Tambaram Cooperative Bank. At about 3.15 p.m., P.W.11 tendered the cash that he was alleged to have received from P.W.2 to the appellant, and the appellant was said to have received it.

m) No sooner P.W.12 arrived at the scene and subjected the appellant to undergo necessary test to ascertain the tainted currencies.

n) The test proved positive and P.W.12 recovered the said sum under Ext.P9 seizure mahazar.

o) The investigation was then taken over by P.W.13. After completing the investigation, he laid the final report. It may be stated that in the final report P.W.11 was earlier arrayed as A2, was dropped as an accused but was listed as a witness.

3. The trial Court took cognizance of the final report and framed the charges as stated above. During trial, the prosecution examined P.W.1 to P.W.13, and produced Ext.P1 to Ext.P27 and M.O.1 to M.O.4. In his defence, the appellant had produced Ext.D1 to Ext.D4 which came to be marked by

confronting the same to P.W.10 and P.W.11. On appreciating the evidence, the trial Court found the appellant guilty of charges for offences under Section 7 and Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act and sentenced him as detailed in the opening paragraph of this judgment. This is now under challenge in this appeal.

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

a) It is an admitted fact that on 27.11.2007, P.W.2 had resigned from IDPL Society where the appellant was working as a Special Officer and joined KCCB, and that P.W.11 was the successor of P.W.2 at IDPL. While so, the appellant had come to know certain acts of misdeeds which essentially involve tampering of his own service record, more particularly his earned leave account. This is established by Ext.D3. This apart the accused had also found P.W.2 over-staying in the quarters of IDPL without making any caution deposit. P.W.2 admits it in his cross examination. Therefore on 04.11.2008, the appellant had issued Ext.D4 proceedings to P.W.11. (which is three days before the registration of the FIR and four days before the trap) informing the latter that P.W.2 was required to pay a caution deposit of

Rs.75,000/-, that he had agreed to pay it in two instalments, and directed him to collect the first instalment of Rs.50,000/- from P.W.2. This communication was confronted to P.W.11 during his cross examination, and he admitted it.

b) It is in this background on 07.11.2008, P.W.11 had received Rs.50,000/- presuming it to be the money which he was required to collect from P.W.2 in terms of Ext.D4 proceedings of the appellant.

c) But P.W.2 shrewdly manipulated and converted his liability to pay the charges towards his stay in the quarters, as if it was bribe money demanded by the appellant, and planted a vigilance case against the appellant.

d) The evidence in this case shows that P.W.12 did not catch P.W.11 red-handed right at the time when P.W.2 handed over the money to P.W.11, but he was intercepted by P.W12 on his way back to IDPL. He prepared Ext.P8 mahazar at the office of CBCID, Tambaram, and very unnaturally he was waiting for the appellant to arrive to receive the money. When the appellant did not arrive to receive the money and proceeded to hold a domestic enquiry in Tambaram Town Cooperative Bank as was originally scheduled by him, P.W.12 led his team to the said bank, tendered the money and declared that the appellant had received bribe money. It is true that the appellant received the planted money, but at no point of time did he receive it with a requisite intent to accept it as bribe money. At all times he was under an impression that he was receiving caution deposit which P.W.2 was under an obligation to pay the IDPL for occupying the IDPL quarters.

5. The learned Prosecutor tried his level best to convince the Court that there indeed was a nexus between the appellant and P.W.11 and harped on the fact that appellant had received the planted currencies with requisite intent to hold it.

Discussion & Decision:

6.1 If the maxim doctrine '*res ipsa loquitur*' can be applied to the facts of the present case as established by evidence, it instantly establishes how a trap should not be conducted, and how TLO should not lose his sense of neutrality and fairness.

6.2 Let the evidence be re-visited, not one of which, it must be stated, could be negated nor could be disputed. It is now arranged in a sequence for ascertaining if there exists a logical connect between the appellant and the crime he is alleged to have committed. It commences with the resignation of P.W.2 as the Secretary of IDPL Society on 27.11.2007, and taking up a new assignment with KCCB. Then follows the following sequence of facts:

a) P.W.2 was occupying a quarters belonging to IDPL. He did not vacate it even after he left IDPL. He admits it in his cross-examination.

b) On resignation, he handed over the charge to P.W.11, who at the relevant time was the cashier of IDPL. As regards the various registers which P.W.2 had handed over to P.W.11 at the time of the former handing over the charges, a Memorandum was prepared, and this Memorandum was signed both by P.W.2 and his successor P.W.11. This Memorandum is part of Ext.D3, which the appellant had produced after obtaining a copy thereof under RTI Act and it did not include the Service Register of P.W.2. During the cross-examination of P.W.2, he was confronted with the allegation that he had not handed over the register pertaining to payment of rent and also his Service Register. P.W.2 admitted that he did not handover the rent register, but so far as the suggestion as to non-handing over of his Service Register is concerned, P.W.2 had replied that he did not remember it.

c) During the cross-examination of P.W.11, the man who actually received the money from P.W.2, he was confronted with Ext.D3. It included the copy of the Service Register of P.W.2 (besides the Memorandum prepared when P.W.2 handed over the charge to P.W.11). With reference to this Service Register, P.W.11 had deposed that P.W.2 had a credit of 121 days to his earned leave, and proceeded to speak about the entries thereof which renders the very availability of 121 days in the earned leave account of P.W.2 suspicious. This is explained: at one point of time P.W.2 had a credit of 121 days in his earned-leave account and out of this he had surrendered 100 days, and yet he had mentioned that he continued to have 121 days to his credit.

d) It is in this backdrop on 09.12.2007, P.W.2 had made his Ext.P4 application for the release of his terminal benefits. In this the appellant had made an endorsement that action on the said application could be taken after the conclusion of the audit for the period when P.W.2 had served IDPL. P.W.11 admits it.

e) The critical issue is whether the appellant had accepted Rs.50,000/-with the knowledge and intent that he was receiving bribe? The line of defence taken was that P.W.2 had agreed to pay the caution deposit for occupying a quarters belonging to IDPL. So far as the issue of caution deposit is concerned, P.W.2 in his cross-examination had admitted that he was in occupation of the quarters of IDPL even after his resignation, and that he had not paid any caution deposit.

f) Now comes Ext.D4. It is a copy of a circular-order dated 04.11.2008 issued by the appellant to P.W.11. The essential facts which this document narrates are:(i) to issue two cheques towards payment of terminal benefits of P.W.2; (ii) to collect Rs.75,000/- towards caution deposit for the continued occupation of the quarters of IDPL by P.W.2. In the second part it informs that P.W.2 had agreed to pay the said sum in two instalments of Rs.50,000 and Rs.25,000/- and proceeded to direct P.W.11 to collect the first instalment of Rs.50,000/- from P.W.2. When P.W.11 was confronted with Ext.D4, he admitted it.

7. Therefore, even prior to P.W.2 preferring his complaint, he had

encountered a situation where he was facing an obligation to pay Rs.50,000/- towards part payment of the caution deposit for his extended occupation of the quarters of IDPL even after his resignation. This is the setting. Now faced with an obligation to pay the caution deposit, P.W.2 had preferred Ext.P2 complaint as if the appellant had demanded bribe of Rs.50,000/-. It now raises a very serious doubt if the alleged demand for bribe could be true, or whether P.W.2, driven by malice, gave a colour of demand for bribe for the money he was under obligation to pay as caution deposit? It now depends on the quality of the trap, and the nature of explanation offered by the appellant for accepting the money. This Court has little doubt in holding that seen in the backdrop of Ext.D4 which P.W.11 admits, coupled with the testimony of P.W.2 that he was still in occupation of the quarters of IDPL despite his resignation, the appellant's explanation is more than adequate to vindicate his innocence. Indeed, he had been fixed. Nothing can exemplify more than the facts of this case as to how criminal law can be abused to implicate an innocent public servant in as grave an offence as in PC Act.

8.1 On the quality of the trap: little said the better. It is admitted by P.W.2, P.W.3 and the TLO himself, that the trap team had gone in two vehicles to

KCCB, the venue for the trap (which to emphasis was the workplace, not of the appellant but of P.W.2, implying thereby P.W.2 was very much in his territory). After the payment and receipt of the planted money, the TLO was alerted, and when he came inside KCCB, P.W.11 was only starting his two wheeler – not a *zip zap zoom* variety, but an ordinary moped. And P.W.11 could not have made any effort to escape to touch the maximum speed in 8 seconds to the amazement of the moped's manufacturer, for he would not have even known at that point of time that he was being shadowed by a trap team. And, the TLO with his two vehicles could not intercept him immediately, but appeared to have given a breathtaking chase - chasing a moped for about 15 minutes, and intercepted it near St. Thomas Mount Police Station. Was the TLO at all there then, or is it just a story he has spun? Or, is this Court witnessing an unimaginative climax scene of a lowly-rated cinema? If so, who had scripted the screenplay? The reasonable man of law who refuses to vacate the conscience of the Court, leaves this court in unabatable restlessness.

8.2 The trap, to this Court, is an atrociously failed trap. If only P.W.12 was keen to hold a trap, sheer common sense should have guided him to fix the venue of the trap at the office of the appellant. Secondly, once the trap, whatever be the degree of its believability, vis-a-vis P.W.11 was successful, investigation should have started from him. But the TLO appeared to have surrendered his sense of fairness, and chose to hold a sequential trap, and had now set up P.W.11 to trap the appellant. If a trap fails, it fails. He could have organised a second trap, if he was fair. Why was the TLO keen to fix the appellant that very day? Was his almanac bereft of any auspicious days for holding a second trap? Here is a scenario where P.W.2 exhibits a motive to fix the appellant. It is understandable though not appreciable. But very unfortunately, he was apparently backed by a TLO, who behaved like an officer possessed with an unusual attitude, far distanced from the level of fairness which the legal system expects of any investigator, and had gone to hunt his marked victim – like a predator marking its prey and hunt. Is it now difficult to draw a logical inference that P.W.12 might have compromised all his sense of neutrality, fairness and personal integrity? Ruthlessness of the investigator and his suspected integrity is a dangerous combination as it may defeat, nay shame the fairness of justice which the criminal justice administration in this country strives to enthrone in every case. Shame on the TLO. The appellant obviously had been harassed by the manipulative skills of the TLO. But, will any among those who are responsible for this state of affairs ever show the humility to seek forgiveness to this poor man? Is there anyone in the administrative set-up even willing to listen to it?

8.3 But this Court will and it does. After all the learned trial Judge had all the opportunity, if not the first opportunity to appreciate the same evidence which this court has now appreciated, and had an equal possibility to arrive at the same conclusion that this court has now arrived. Very unfortunately, the learned trial Judge has not chosen even to discuss the effect and impact of Ext.D4 in co-relation with other evidence. Every trial Judge must realise that no matter what the jurisdiction is, they are here to display an impregnable confidence to do that which they are expected to do. A court of first instance must do a complete job of what is before it, and should leave very little for the appellate court to interfere. The trial Judge in this case had lost an opportunity to hold a mirror for the prosecution. What the verdict of the trial Court has now achieved is that it has managed to extend the agony of the appellant. *Quo vadis Justice*?

9. To conclude, the appeal is allowed and judgment of the Special Judge / Chief Judicial Magistrate, Chengalpattu in Spl.C.C.No.13 of 2010 dated 03.05.2018, convicting and sentencing the appellant is hereby set aside and

the appellant is acquitted. The bail bond executed by the appellant is cancelled.

24.10.2024

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Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To:
1.The Special Judge / Chief Judicial Magistrate
Chengalpattu.

2. The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

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Crl.A.No.282 of 2019

24.10.2024