IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.Nos.416 & 422 of 2020

1.S.Kubendiran .... Appellant in Crl.A.No.416/2020 / A1
2.P.Vijayakumar .... Appellant in Crl.A.No.422/2020 / A2

Vs

State Represented by
The Deputy Superintendent of Police
Vigilance and Anti Corruption
Villupuram.
Crime No.3 of 2010. .... Respondent / Complainant

Prayer in Crl.A.No.416 of 2020 : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to call for the records and set aside the sentence and conviction passed in the order of conviction dated 06.10.2020 made in Special Case No.33 of 2014 by the learned Special Judge for Special Court for Prevention of Corruption Act Cases, Villupuram.

Prayer in Crl.A.No.422 of 2020 : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction and sentence imposed on the appellant by judgment dated 06.10.2020 made in Special Case No.33 of 2014 on the file of Special Court for Prevention of Corruption Act Cases, Villupuram by allowing the present criminal appeal.

In Crl.A.No.416 of 2020 :

For Appellant : Mr.V.R.Balasubramaniam

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

In Crl.A.No.422 of 2020 :

For Appellant : Mr.B.Kumarasamy

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

COMMON JUDGMENT

1. Both the accused in Spl.C.C.No.33 of 2014, on the file of Special Court for Prevention of Corruption Act Cases, Villupuram, challenge the judgment of the said Court dated 06.10.2020, convicting and sentencing them for offences under the Prevention of Corruption Act, 1988 in this appeal. So far as A1 (Appellant in Crl.A.No.416 of 2022) is concerned, he was convicted U/s.7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, whereas, A2 was convicted for the offence U/s.12 of the Prevention of Corruption Act, 1988. The sentences imposed on them by the trial Court is as below:

Accused	*Offence*	*Sentence imposed*
A1	U/s.7 of the Prevention of Corruption Act, 1988.	R.I. for four (4) years and to pay a fine of Rs.5,000/-, in default to undergo S.I. for six (6) months.
	U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	R.I. for four (4) years and to pay a fine of Rs.5,000/-, in default to undergo S.I. for six (6) months.
A2	U/s.12 of the Prevention of Corruption Act, 1988.	R.I. for three (3) years and to pay a sum of Rs.5,000/- in default to undergo three (3) months S.I.

2.1 The case of the prosecution unfolds as below. For narrative convenience, the appellants would be referred to by their rank before the trial court:

a) In February - March, 2010, A1 was working as a junior engineer in TNEB at Sadaiyampattu in Kallakurichi Taluk. In the same office A2 was working as a foreman.

b) PW3, the defacto complainant to be, had an electricity connection to his well. He wanted to change that connection to his borewell, for which purpose, he had made Ext.P3 - application, dated 23.02.2010 in the office of the TNEB, Sadaiyampattu, Kallakurichi.

c) In connection therewith on 02.03.2010, A1 made a field visit to the property of PW3.

d) It is in this circumstances, on the following day (03.03.2010) PW3 met A1, and A1 was alleged to have demanded Rs.5,000/- as bribe money for doing what he was required to do without any illegal gratification or incentive. There was some negotiation and bargaining said to have been done and the bribe money was reduced to Rs.3,500/-.

e) Unwilling to bribe A1, PW3 preferred Ext.P11 - complaint, receiving which PW9 registered Ext.P25 - F.I.R. PW9 was also the TLO and he proceeded to initiate necessary proceedings for trapping A1.

f) 10.03.2010 was chosen as the day for the trap. At the request of PW9, two shadow witnesses viz. PW2 and one Purushothaman were made available. After completing the pre-trap procedures, PW9 led his team to the office of A1 and A2. The time was 8.45 a.m. PW3, the defacto complainant, accompanied by PW2, met A1, and as planned PW3 tendered Rs.1,000 x 3 and Rs.500 x 1, all smeared with phenolphthalein powder, to A1. A1, however, told PW3 that the said money might be handed over to A2, the foreman. Therefore, PW3 along with PW2 approached A2 and paid the money over to the latter which he had received. Soon PW3 would signal PW9, and PW9 arrived at the scene with the other shadow witness and proceeded to hold necessary tests to complete the rest of the post trap-procedures. The trap indeed was successful. As part of the procedure, the money planted by PW9, was seized under Ext.P6 seizure mahazar.

g) Further investigation was taken over by PW10 and the rest of the procedures were completed. Midway through the investigation, PW10 was transferred and his successor, PW11 took over the investigation, completed it and laid his final report.

2.2 The trial Court then proceeded to frame necessary charges as outlined in the opening paragraph of this judgment and proceeded to try the accused persons before it for the charges. During trial, the prosecution examined PW1 to PW11, marked Ext.P1 to Ext.P31 and produced MO1 to MO4. For the defence, A1 examined DW1 and DW2 and marked Ext.D1. A2 did not produce any evidence on his side in his defence. After examining the evidence and evaluating them, the trial Court found both the accused persons before it guilty of the offences charged against them and convicted them as stated above.

3.The present appeal is directed against the said judgment. Heard Mr.V.R.Balasubramaniam and Mr.B.Kumarasamy, the learned counsel for the appellants and Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the appellant in Crl.A.No.416 of 2020 (A1) submitted that on 10.03.2010, at around 8.45 a.m., A1 was in his seat and opposite to him was seated A2, that P.W.3, the complainant along with P.W.2, the shadow witness, approached A1, and tendered the money, and that A1 told P.W.3 to hand over the money to A2. It is an indisputable fact that for transfer of electricity connection (technically called 'change over switch'), a sum of Rs.125/- is needed to be paid and that sum was asked to be paid. A1 at the best of time could only believe that the money might be the fees or charges which P.W.3 might have to pay. And therefore, beyond the statement attributed to A1 that he required P.W.3 to pay the money to A2, there is nothing on record to clinchingly hold that the money was paid pursuant to a demand for bribe.

5. The learned counsel for the appellant in Crl.A.No.422 of 2020 (A2) submitted that he received the money because A1, his superior officer, directed that the money be paid to the former. It is not the case of the prosecution that A2 made any demand on behalf of A1 nor it is the case of the prosecution that bribe money was paid to him on behalf of A1. An abetment is a positive act and not a passive act, and it requires something more than a mere receipt of an amount.

Unless the prosecution is able to establish that the money indeed was received by A2 with the knowledge that it was the bribe money and that it was intended to be paid over to A1, a mere receipt would not constitute an offence under Section 12 of P.C.Act.

6. The learned Prosecutor on his part submitted that in terms of the ratio in ***Neeraj Dutta Vs. State (Government of NCT of Delhi)*** [(2023) 4 SCC 731], when money is paid, and accepted, which is not required to be paid or received in law, then it can be inferred that there was a demand, but for which nobody would be paying any money. And proving demand through direct evidence is nigh difficult and hence, it must be inferentially gathered. Here is a scenario where both P.W.2 and P.W.3 were consistent in their testimonies that when P.W.3 tendered the money to A1, he required that it be paid to A2. If the money were not a legal money, then A2 need not have even received the money. And, the defence could not upset the case of the prosecution that the money was not tendered by P.W.3 without a demand.

7. The facts which could be gathered from the above arguments are that there is no denial of that fact that A1 has received some amount from P.W.3. According

to A1, he has received the money on the belief that he was receiving Rs.125/- which was required to be paid for transfer of electricity connection, technically known as 'change over swtich'. However, what was paid to him was 1,000/- rupee notes x 3 nos, and 500/- rupee note x 1 no. In other words, he received four notes (totalling Rs.3,500/-) and even if the intent were to receive Rs.125/- then only one note is sufficient to pay the said charges. And when four notes of higher denomination were tendered, with the value of each one those notes was much more than Rs.125/- which was statutorily required to be paid by P.W.2, anyone with an uncompromising integrity would have taken only Rs.500/- and would have returned the remaining currencies. Instead, A1 received the money and passed it on to A2. Therefore, the intent to hold on to the entire money received from P.W.3 stands established. It is this intent which differentiates whether A1 had merely received the money tendered by P.W.3 without an intent to hold on to it to constitute the requisite *mens rea* for its acceptance, or if he had received the money tendred with a view to accept it. To repeat, the charges which P.W.3 was required to pay officially was a mere Rs.125/-, and it necessarily implies that the balance in excess of official charges must have to be credited only to the bribe account of A1. And, this Court is absolutely dissatisfied with the quality of the explanation offered by A1. The conclusion is a writing on the wall for A1: this Court does not find any merit in the appeal (Crl.A.No.416 of 2020) filed by A1. Having stated thus, this Court chooses to reduce the sentence imposed on him to 2 years R.I. without any alteration in the fine imposed on him or the default sentence he was required to undergo.

8. Turning to A2, as per the discussion, it is A1 who had received the money and passed it on to A2. If at all the criminal intent should be and could be attributed to A2, then it could be only under Section 120B IPC. However, no charges has been framed that A1 had conspired with A2 to receive the bribe money. Instead, only an independent charge under Sec.12 of the Act has been framed against A2, for abeting the crime. An abetment of crime is an ex-ante act which leads to the commision of the principal crime, and not an ex-post act, something done after the commission of crime. The converse however, does not produce the same consequence, such as where one acused has received the money on behalf of another accused person. Here, the role of A2 comes only after A1 had received the money, and hence it cannot constitute an abetment to receive bribe. In view of the same, this Court finds that the charges against A2 cannot be said to have been established by the prosecution, and at any rate, A2 is entitled to benefit of doubt.

9. In the result, this Court is constrained to pass the order as below :

   A) The appeal in Crl.A.No.416 of 2020 filed by A1 is dismissed. The judgment of the trial Court in Special Case No.33 of 2014 convicting A1 is hereby confirmed. His sentence on both the score is reduced to 2 years RI but the sentence of fine imposed on him along with the default sentence is confirmed. His bail bond is cancelled, and he is required to surrender before the trial Court on or before 02.12.2024, and on his failure to surrender, the trial Court is directed to take steps to secure the custody of A1, the appellant in Crl.A.No.416 of 2020, to undergo the remaining period of sentence.

   B) The appeal in Crl.A.No.422 of 2020 filed by A2 is allowed. The judgment of the trial Court in Special Case No.33 of 2014 convicting and sentencing A2 is hereby set aside.

08.11.2024

Index : Yes / No
Neutral Citation : Yes / No
kas/ds

To:

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

2.The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
Crl.A.Nos.416 & 422 of 2020

08.11.2024