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CRLA.No.42 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2024

CORAM : MR.JUSTICE N.SESHASAYEE

Crl.A.No.42 of 2021

State by Inspector of Police
Vigilance and Anti-Corruption Police
Special Investigation Cell
Chennai

... Appellant

Vs.

K.Gajendran

... Respondent

Prayer: Criminal Appeal is filed under Section 378 Cr.P.C., to set aside the judgment of the order of acquittal in S.C.No.11 of 2010 dated 01.11.2019 passed by the learned Special Judge / Chief Judicial Magistrate, Thiruvallur, and convict the accused for the charges framed.

For Appellant : Mr.K.M.D.Muhilan
Government Advocate (Crl. Side)

For Respondent : Mr.S.Karthikeyan
for Mr.P.Ezhil Nilavan

JUDGMENT

This appeal is preferred by the State challenging a judgment acquitting A1 in Special Case No.11 of 2010, on the file of the learned Special Judge / Chief



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Judicial Magistrate, Thiruvallur. A1 along with A2 faced trial for charges U/s.7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. However, pending trial A2 died and trial proceeded against A1.

2.The case of the prosecution is as below:

- ✓ A1 is a Junior Engineer with erstwhile TNEB, Ayyappanthangal, Chennai. A2 is a Revenue Supervisor working in the same office.
- ✓ Be that as it may, P.W.2, preferred Ext.P6-application dated 16.02.2009, for converting his domestic electricity connection into a commercial connection.
- ✓ In connection with his application, on 21.02.2009, P.W.2 met A1 during which time A1 is said to have demanded Rs.12,000/- as bribe. After hectic negotiation, A1 is said to have given a discount of Rs.5,000/- and reduced the sum demanded to Rs.7,000/-, and required P.W.2 to route the bribe money through A2.
- ✓ Unwilling to pay the bribe to achieve his objective, P.W.2 preferred



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Ext.P2 - complaint on 23.02.2009, receiving which, P.W.9 laid Ext.P9-F.I.R. The F.I.R. was registered at about 5.30 p.m. Soon, The trap was planned for 24.02.2009 and P.W.9 began his preparation for pre-trap protocol. P.W.2 and certain C.S.Rajakumar as shadow witnesses.

- ✓ On completing the preliminary procedure, P.W.9 under Ext.P4 - Entrustment Mahazar, entrusted P.W.2 with Rs.7,000/- (Rs.500 x 14 notes), all smeared with phenolphthalein powder. The trap team left for the office of A1.
- ✓ The trap team reached office of A1 at around 1.30 p.m. when P.W.2 accompanied by P.W.3 went inside the office of A2 but A2 was surrounded by many and hence P.W.2 met A1, but A1 was steadfast that the money be routed only through A2. Thereafter, P.W.2 met A2 and handed over the planted currencies. The time was around 1.45 p.m. Thereafter, P.W.2 signalled P.W.9 and P.W.9 arrived at the scene of occurrence with the rest of the trap team. P.W.9 completed the rest of the procedures and seized the planted currencies under Ext.P5 - seizure mahazar.



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✓ P.W.10, then took over the investigation, completed it and laid his final report.

✓ The trial Court framed charges U/s.7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against both A1 and A2. As stated earlier, A2 passed away pending trial and the Court tried A1 for the charges it has framed.

3.During trial the prosecution examined P.W.1 to P.W.10, produced Ext.P1 to Ext.P13 and marked MO1 to MO3. A1, on his part, examined D.W.1, an official of the TNEB (Stores) and produced Ext.D1 to Ext.D7. On evaluating the evidence, before it, the trial Court found A1 not guilty and acquitted him accordingly.

4.The State has preferred this appeal challenging the aforesaid judgment.

5.The learned Prosecutor submitted that the trial Court has chosen to acquit the respondent on two major grounds:

a) that nowhere it is said that A1 had demanded 'bribe'. In other words,



merely because the word bribe was not used, it became a ground for the learned Chief Judicial Magistrate to hold that there was no demand for bribe.

- b) the second issue is that in a case where the T.L.O. was the D.S.P., the case was investigated by the Inspector of Police, who is one rank below the D.S.P. and it contravenes paragraph 53 of V & A.C. Manual.

5.2 Developing his arguments the learned Prosecutor submitted, so far as the ground that no demand for 'bribe' was made is concerned, PW.2 was categorical that on tendering Rs.7,000/- to A2 and inquired him if he would issue a receipt for the same, A2 had replied that the money would be shared among all. After all, any demand for bribe to be in secrecy and each witness has his own way of explaining it. Merely because the word bribe was not used, it cannot be a conclusive factor to hold that there never was a demand for bribe.

5.3 So far as the alleged violation of paragraph 53 of V & A.C. Manual is concerned, the learned Prosecutor submitted that no accused can take advantage of any breach of the manual.



6. Per contra, the learned counsel for the respondent submitted that

- a) It might be true that an accused might not be able to take advantage of every breach of V & A.C. Manual, but still the manual binds the investigators. This apart, for instance a failure to record statement under paragraph 47 might not be taken advantage of, for an accused person would still have an opportunity to participate in trial to disprove the case of the prosecution. Atleast, he is still can create certain serious dents in the prosecution case and hence a violation of paragraph No.47 is not considered as serious breach as to give a benefit or advantage to the accused. However, so far as breach of Rule 53 is concerned, it goes to the competency of the authority who can be an investigator.
- b) so far as the demand part is concerned, PW.2 in his cross examination has conceded that A1 merely required PW.2 to pay necessary charges for change of tariff from domestic to commercial, and that A2, who is now dead, was also had made only a similar statement and that A1 at no point of time had demanded any bribe. If at all anything was spoken by PW.2 vis-a-vis demand, that was directed only against A2. This was corroborated by PW.4, the mother of PW.2, in whose name the service



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connection for the building stands.

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c) This apart, it is a trap case where the F.I.R. opens without the name of the accused person. The second curious thing is that while the alleged date of demand was stated to be on 21.02.2009, on a day prior to that, on 20.02.2009, A1 had raised a demand for Rs.16,444/- to PW.4, which both PW.4 and PW.2 admit. It is to avoid payment, PW.2 has engaged in this novel method of implicating an 'honest' public servant in a crime. Indeed, PW.4 vide Ext.D2 had only requested for payment of this sum in instalments. Vide Ext.D4 dated 17.11.2009, the respondent had informed them to keep payment of the sum demanded viz. sum of Rs.16,444/- in abeyance. This would indicate A1 was implicated in the case because he had made a demand for payment of official charges of Rs.16,444/-, and it is to evade the same and to continue to have electricity connection PW.2 had schemed with the T.L.O. Indeed the trial Court has strongly deprecated the conduct of the T.L.O.

This appeal stands dismissed..... to be completed.

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Index : yes / no

Neutral Citation



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