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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2024

Pronounced on : 18.12.2024

CORAM : JUSTICE N.SESHASAYEE

Criminal Appeal No.728 of 2023

S.P.Chandrasekar .... Appellant / Accused

Vs

State Rep by
The Inspector of Police
Vigilance and Anti Corruption
C.C.III Nandhanam, Chennai.
Cr.No.6/AC/2009 .... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the order passed by the Special Judge cum Chief Judicial Magistrate at Chengalpet in Special S.C.No.13 of 2011 dated 19.06.2023 by allowing this appeal.

For Appellant : Mr.K.Ravi Anantha Padmanaban
Senior Counsel
Assisted by Mr.M.Hemanth Kumar

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

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JUDGMENT

This appeal is directed against the conviction and sentence imposed on the appellant for offences under Section 7 and Section 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act. The trial Court slapped a sentence and imprisonment of three years S.I. for each of the charges as well as Rs.20,000/- as fine, again separately for each of the charges, and in default it directed the appellant to under go further sentence of six months simple imprisonment. The sentences were directed to run concurrently,

2. The case of the prosecution runs as below :

a) The appellant was working as Assistant Engineer (Operation and Maintenance) in the erstwhile TNEB at Chitalapakkam, Chennai.

b) While so, P.W.2 along with his wife had made Ext.P7 application dated 20.03.2009, and jointly sought a three phase commercial connection for their commercial building. This application was received at the office of the appellant.

c) On 09.06.2009, in connection with the application that he had made,

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P.W.2 met the appellant. The appellant would then demand Rs.25,000/- as bribe and required P.W.2 to pay an advance bribe amount of Rs.5,000/- on 12.06.2009, and to pay the balance after the job was done.

d) Unwilling to pay the bribe money, on 12.06.2009, P.W.2 preferred Ext.P2 complaint to the respondent, receiving which P.W.8, the Inspector of Police, registered Ext.P13 FIR at 8.30 a.m. on the same day. And P.W.8 swung into action to organise the trap for nabbing the appellant.

e) After completing the pre-trap protocol, P.W.8 led his team comprising P.W.2 and two shadow witnesses, P.W.3 and P.W.4. The trap team landed at the office of the appellant at about 12.00 in the noon. As was planned, P.W.2 tendered Rs.5,000/- (Rs.500 notes x 10), all smeared with phenolphthalein powder and entrusted the same vide Ext.P3 entrustment magazar.

f) Thereafter, the TLO led the trap team comprising *inter alia*, P.W.2 and the two shadow witnesses,. The trap team landed at the office of the appellant at around 11.45 a.m., As planned, P.W.2 along with P.W.3, the shadow witness went inside the office and paid the planted

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currencies to the appellant, which the latter had received the money and put it in his pocket.

g) Wasting no time, P.W.2 alerted P.W.8 and he descended to the scene along with P.W.4 and completed the rest of the procedural formalities. The trap was successful.

h) P.W.8 would now proceed to complete the post-trap procedures which included seizure of the tainted money under Ext.P8, seizure mahazar.

i) The investigation was thereafter taken over by P.W.9, who had completed his investigation and laid his final report.

3.1 The trial Court took cognizance of the final report and framed necessary charges as against the appellant as detailed in the opening paragraph of this judgment, and tried the appellant for the charges. During trial, the prosecution examined P.W.1 to P.W.10, and produced Ext.P1 to Ext.P18 and M.O.1 to M.O.5. The defence also examined D.W.1 and D.W.2, and marked Ext.D.1 to Ext.D6.

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3.2 After appreciating the evidence, the trial Court found the appellant guilty and sentenced him as mentioned earlier. This judgment is now under challenge.

4.1 The learned counsel for the appellant made the following submissions :

a) The undisputed and evidentiary unassailed procedure for sanctioning the three phase connection is that once an application for three phase connection is received at the office of the Assistant Executive Engineer (AEE), from there the application would be forwarded to the Office of the Assistant Engineer for him to hold a field visit with Commercial Inspector and to provide an estimate charges for providing a three phase connection. In the present case, the application was received at the office of the appellant on 23.03.2009, which could be seen from the initial and date put on Ext.P7 application. After a joint inspection on 26.03.2009, P.W.5 had submitted Ext.D1, his report indicating the estimated cost of providing a three phase connection.

b) Based on Ext.D1, the Executive Engineer, who is not a listed witness, issued his sanction vide Ext.P14, and on 06.05.2009, P.W.2 also paid the estimated cost of Rs.37,700/- as was required in Ext.P14.

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c) After the remittance of the estimated charges, the appellant, for enabling issuance of work order for construction wing of TNEB, had sent Ext.D2 note, dated 08.05.2009 to the Executive Engineer to grant him permission to despatch the necessary materials to provide a three phase connection to P.W.2's wife house property.

d) On 27.05.2009, the appellant had received necessary sanction on Ext.D2, based on which, on the very date, the appellant had handed over the file to the construction wing of the TNEB vide Ext.P17. Therefore, after 27.05.2009, there was nothing pending before the appellant vis-a-vis providing a three phase electricity connection, pursuant to Ext.P7 application.

Therefore, it is *prima facie* unbelievable that P.W.2 had met the appellant on 09.06.2009, and make an allegation that the appellant had demanded Rs.25,000/- on that date and that he had parted with Rs.5,000/- as the first instalment of bribe money.

4.2 It is in this backdrop, on 12.06.2009, the trap had taken place. The time was around 11.45 a.m., While P.W.2 made a statement consistent with the

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prosecution line of the story, P.W.3, the independent shadow witness has narrated what had happened even in his chief-examination. According to him, the trap team went in a government vehicle to the office of the appellant, in which was also situated the office of the Executive Engineer, and that the vehicle was parked some 100 mtrs. from the said office, that he (P.W.3) had entered the said office a few minutes ahead of P.W.2, that P.W.2 entered the office, went inside, and before he (P.W.3) could follow P.W.2, the latter vanished, and later P.W.2 rushed out and he looked disturbed. Therefore, it was not P.W.2, but him (P.W.3) who signaled Thiru.Ali Basha, the DSP thinking that P.W.2 might have tendered the bribe money to the individual concerned. Based on his signal, the entire trap team entered the office and went right inside the room, picked up the appellant along with them. There he saw the money lying on the table. He further states that Thiru.Ali Basha had directed the appellant to take the money and put it in his pocket and thereafter hand it over to him. Promptly the prosecution treated P.W.3 as hostile. They have declared him hostile and cross-examined. But except confronting P.W.5 with his statement recorded under Sec.161(3) Cr.P.C., nothing came out of it. The evidence of P.W.3 was corroborated by P.W.4, the other shadow witness but he was not declared hostile.

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This was further corroborated by P.W.5, the Commercial Inspector and he too was not declared hostile. This apart, P.W.5 also states that the appellant was not there in the office on 09.06.2009, the date of the first demand.

4.3 Summing up his arguments, the learned counsel submitted that: the trap apparently was for somebody else, but since the other officer was not there in the office, the appellant was made a stale proof but indeed the prosecution did not even take the responsibility to examine Ali Basha, whom reference was made in the testimonies of P.W.2 to P.W.5.

5. Per contra, the learned Prosecutor appearing for the State would submit that :

a) the cross-examination of P.W.2 discloses that the line of defence adopted by the appellant was that the whole trap was motivated based on certain previous enmity between the appellant and P.W.2. But beyond a mere suggestion, there is nothing on record to even draw any kind of inference that there could have been any enmity for P.W.2 to nurture a motive against the appellant.

b) Admittedly the money was recovered from the appellant and here the

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testimony of P.W.3 must have to be taken with a pinch of salt merely because a witness had turned hostile and that does not *ipso facto* imply that its effect should to in aid of the defence. The duty is on the Court to evaluate every shred of evidence made available for the prosecution. After all why should the prosecution show an extra statutory interest to fix the appellant in a case such as this.

Discussion & Decision

6. According to the prosecution, the appellant is guilty because the planted currencies were recovered from his shirt pocket and the trap test was also successful. Is it adequate to fasten criminal liability on the appellant?

7. In ***J.Pandiaraj (Died), Rep by his LRs Vs. State by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri,*** [Crl.A.299 of 2015, dated 08.11.2024], this Court had stated the effect of the trap test and how the burden on the accused gets discharged. It reads as below :

> *"6.1 Let the law be stated. For proving a crime under Sec.7 of the PC Act, the prosecution should establish the minimum facts which constitute the tripod – the demand, payment and acceptance of*

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bribe money on which the crime rests. Even if one leg is not established then the offence cannot be said to have been committed.

6.2 While a successful trap gives an opening credence to the accusation in the FIR as to prompt further investigation into it, it is not conclusive. What does a trap-test establish? It can at the best prove that an accused person has either received the planted currencies, or he has just touched it, for the moment the accused-person touches the planted currencies or an article without even completing the act of receiving it, the trap-test will produce positive results. Therefore notwithstanding its functional utility in providing an opening for investigation, a trap-test carries a weak evidentiary value to bring home the guilt of the accused person on its own strength, for it is neither capable of proving a demand for and the acceptance of bribe-money. At the best it may serve to prove payment of bribe, which perhaps is the easiest of the triple criteria to prove, since the bribe-giver himself is a decoy of the investigating agency.

6.3 How then to prove demand for bribe? It must be stated that it will be fiendishly difficult for any prosecuting agency to prove demand for bribe through direct evidence, for no person given to his senses will ever make a demand for bribe, leaving a trail for an investigating agency to track. In many cases, the prosecution tries to establish it by producing the CDR details of cellphone to cellphone call details, but its efforts invariably stop there. Unless

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the text of the cellphonic conversation, duly authenticated by a certificate issued under Sec.65B of the Evidence Act (now Sec.63 of BSA) is produced, no useful purpose would be served by mere production of the CDR. Necessarily, a demand for bribe must be inferred only from proof of payment and acceptance of bribe money.

6.4 The next aspect is proof of acceptance. As stated earlier, a trap-test is inconclusive to hold that the accused is guilty of accepting bribe, for it, at the best of times establishes that either the accused has received the planted article or has just touched it. In the context of proving the crime under Sec.7, what then constitutes acceptance, and how it is different from receipt of a planted article? Receipt involves a mere act of receiving, and it need not be accompanied by an intent to hold on to what is received. Therefore, acceptance requires a shade of intent more than that which is required for receiving. And, even acceptance of the planted currencies or article need not always lead to a conclusion that there is an intent to accept what is received. In other words, notwithstanding the fact that the bribe-giver may have paid anything as bribe, the alleged bribe-taker need not have received it with an intent that he is receiving what he receives as bribe. This implies that in a given case, there can be a mismatch between the intent of a bribe-giver in giving the bribe and the intent of the accused person in receiving it. Therefore, proof of acceptance of bribe depends on the purpose or the intent behind

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the acceptance of the tainted article. Hence, for completing an act of acceptance for proving the offence under Sec.7 or Sec.13(1)(d), the purpose or the intent for receiving the tainted or planted article should be incapable of being explained, which given the circumstance in which it is set, is acceptable to a reasonable man of law in the ordinary course of human conduct. It could therefore be concluded that while a simple act of receipt need not carry mens rea, acceptance of the planted article does require mens rea. The distance between a receipt and acceptance of bribe may be slender, but it is critical.

6.5 However, the intent behind accepting the planted article, often the sinned-currencies, will be only within the personal knowledge of the accused person. It is hence, when a trap-test is proved positive, the presumption under Sec.20 of the PC Act gets activated. But the intent behind holding on to what is received by an accused during the trap will be only within the personal knowledge of the accused, and in terms of Sec.106 of the Evidence Act (now Sec.109 of the BSA) the burden will be on him to establish it. It is hence, the statute has imposed a reverse burden on him to explain. Ultimately, it is the quality of explanation that will decide whether the accused will enjoy his freedom or not. If the explanation and the evidence in aid of it, appears believable and reasonably be accommodatable within the conscience of the Court, then no act of acceptance of bribe can be said to have been established. This is essentially a question of fact.

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6.6 Therefore, mere proof in aid of a self-serving act of payment of bribe-money, unaccompanied by poof of its acceptance (or should it be non-acceptance, since acceptance depends largely on the quality of the explanation offered for receiving the planted currencies or article), no demand for money can be deduced as an inferable fact. In other words, even though a demand for money is capable of being proved mostly inferentially, still unless the factum of acceptance of bribe could be ascertained from the quality of explanation offered by the accused, a demand for bribe cannot be inferred.

6.7 In cases, where the prosecution attempts to prove demand for bribe as an independent fact but through shaky evidence, it may not carry much weight if the reverse burden cast on the accused person is not adequately discharged. If however, if the accused person is able to offer tenable and believable explanation as to the possession of planted currencies in his hand adequate enough to persuade the court to arrive at a conclusion that at the best there could be only receipt of planted article but not its acceptance, then a shaky evidence produced by the prosecution to prove the demand for bribe as an independent fact will accelerate the advantage of the accused person. Indeed, in a given case, it may also go to prove that the entire case against the accused was either fixed by the complainant, or that the trap itself was afflicted by malafides.

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6.8 To this it may be added that while law requires all the three acts of demand, payment and acceptance of bribe must be simultaneously proved, it does not require that they must be established in the same order. Ordinarily, it will start from proof of payment of bribe (by default), followed by proof of acceptance (by evaluation from a plane of ordinary course of human conduct), from which flows the proof of demand (by inference)."

The point here is, has the appellant been able to explain why and how the tainted currencies reached his shirt pocket? The testimony of P.W.2, except providing the setting, does not deserve total reliance in comparison to the testimonies of other independent witnesses. Here the testimonies of P.W.3 and P.W.4, both the shadow witnesses and also P.W.5, the Commericial Inspector of TNEB are credible.

8. Of the two shadow witnesses, the TLO had set up P.W.3 to accompany P.W.2. However, P.W.3 would depose that he had barely seen P.W.2 entering the office of the Executive Engineer and soon disappeared. Then, he saw P.W.2 coming out of the room and looked disturbed. And according to P.W.3, it was he who alerted the TLO, and when TLO along with P.W.4 entered the office, he went to the room of the appellant where he (P.W.3) found the cash on the table of the appellant. He then would state that a certain Ali Basha, the DSP forced the

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appellant to take the cash and put it in his pocket. This part of the testimony of P.W.3 apparently has gone against the script of the prosecution. P.W.3 was declared hostile. But P.W.4, the other shadow witness and also P.W.5 too have substantially narrated what P.W.3 had stated. But they were not declared hostile. While the Prosecutor contended that the appellant may not gain an advantage over the fact that P.W.3 has not supported the prosecution case, he has no answers as to how to deal with the testimonies of P.W.4 and P.W.5. And they all refer to a certain Ali Basha, the DSP, but he is nowhere seen in the list of witnesses nor was he examined otherwise.

9.1 In terms of what this Court had discussed in ***J.Pandiaraj case*** [Crl.A.299 of 2015, dated 08.11.2024], once the trap test is proved positive, presumption under Section 20 of P.C. Act will come to play and the reverse burden will be cast on the accused. So far as the evidence in this case goes, P.W.3 to P.W.5 in unison make a statement that it was Ali Basha, the DSP who had forced the appellant to take the money and put it in his pocket. As earlier stated, while P.W.3 was declared hostile to the prosecution, the other two witnesses were not treated hostile and hence, this Court cannot overlook the effect of their evidence.

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Wherever a statutory presumption in aid of prosecution is available, rebutting the effect of such presumption need not prove his defence beyond all reasonable doubts but only need to create a probability that the prosecution case might not be true. This Court finds that the appellant has been able to establish it now.

10.1 Another corroborative fact which cannot be overlooked is that according to P.W.2, he had met the appellant on 09.06.2009 and it was on that date, the first demand for Rs.25,000/- was made. According to P.W.6, the Assistant Executive Engineer, it was the Executive Engineer who was vested with power to sanction 3-phase connection to P.W.2 and that the role of the appellant is limited to seek materials to the construction wing, pursuant to the cost estimated by the Executive Engineer. Here, on 26.03.2009, P.W.5 had submitted Ext.D1, estimate, based on which the appellant had sent Ext.D2 note dated 08.05.2009 to the Executive Engineer for procuring necessary materials from the stores, that on 27.05.2009, the appellant had received necessary sanction, and thereafter, he had passed on the file to the construction wing of TNEB vide Ext.P17 dated 27.05.2009. Therefore, as rightly contended by the appellant, that after 27.05.2009, the appellant had no official duty to perform, it is unlikely that

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P.W.2 might have met the appellant on 09.06.2009.

10.2 Given the fact that the appellant did not have any official duty to be completed vis-a-vis Ext.P7 application for 3-phase connection and given the fact that the prosecution narration of the crime was not supported by any one of the shadow witnesses and P.W5, necessarily this Court has to hold that the appellant was able to rebut the presumption under Section 20 of the Act more than adequately.

11. In the result, the appeal is allowed and the order passed by the Special Judge cum Chief Judicial Magistrate at Chengalpet in Special S.C.No.13 of 2011 dated 19.06.2023, convicting and sentencing the appellant is set aside, and appellant is acquitted of charges levelled against him. The bail bond executed by the appellant is cancelled.

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

1. The Special Judge cum Chief Judicial Magistrate
   Chengalpet.

2.The Public Prosecutor
High Court, Madras.

3.The Inspector of Police
Vigilance and Anti Corruption
C.C.III Nandhanam, Chennai.

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Criminal Appeal No.728 of 2023

N.SESHASAYEE.J.,

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Pre-delivery Judgment in
Crl.A.No.728 of 2023

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