IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.130 of 2017

State represented by
The Public Prosecutor,
High Court, Madras – 600 104.
[V & AC, CC-II Detachment
Nandanam, chennai – 35,
Crime No.16/AC/2008/CC-II] ... Appellant

Vs.

L.K.Thiruppathy ... Respondents

PRAYER: Criminal Appeal filed under Section 378(1)(b) of Code of Criminal Procedure to set aside the judgment of acquittal of the accused passed in Special Case No.3 of 2010 dated 13.06.2016 by the Court of Special Judge and Chief Judicial Magistrate, Tiruvallur.

For Appellant : Mr.S.Santhosh,
Government Advocate (Crl. Side)

For Respondent : Mr.K.Ravi Anantha Padmanaban,
Senior counsel for
Mr.B.Thirumalai

JUDGMENT

This Criminal Appeal has been filed by the State, against the judgment of acquittal dated 13.06.2016, made in Special S.C.No.3 of 2010, by the Special Court for the Cases under Prevention of Corruption Act, Tiruvallur for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is as follows:

2.1 The respondent/accused worked as Assistant Director cum Development Officer, Footwear Unit, KVIB, Industrial Estate, Ambattur from 24.03.2008 to 06.09.2008. The defacto complainant/PW2 is a supplier, who had supplied all kinds of garment accessories to KVIB for the past 11 years. The PW2 had supplied materials vide invoice No.30 dated 09.07.2008 for Rs.72,468/- and invoice No.40 dated 26.07.2008 for Rs.1,20,032/-, totalling Rs.1,92,500/-. With regard to payment due on the above invoices, PW2 had frequently met the accused at his office since 29.07.2008.

2.2. On 05.09.2008, at about 9.30 hrs, when PW2 had contacted the accused through phone No.9994461808 regarding his payment, the accused informed him that he had received a mail transfer of Rs.1,10,000/- from KVIB towards goods supplied and demanded a sum of Rs.20,000/- as illegal gratification other than legal remuneration for him to realise the amount. On the same day, PW2 met the accused at his office at 11.00 hrs and the accused informed him that the cheque would be ready in the afternoon and again demanded the bribe amount of Rs.20,000/-. When PW2 expressed his inability to pay the said huge sum, the respondent/accused reduced it to Rs.15,000/-.

2.3. On 05.09.2008 at 15.40 hrs, the accused contacted PW2 through his phone, informing him that the cheque was ready and asked the complainant to bring the bribe amount at 11.00 hrs on 06.09.2008 to receive the cheque. In pursuance of the same, when PW2 met the accused at his room on 06.09.2008 at about 12.30 hrs, the accused after ascertaining the fact that PW2 brought the demanded amount, allowed him to receive the cheque from the accountant and received the amount of Rs.15,000/- by his right hand and kept it in his right side table drawer as illegal gratification other than legal remuneration and thereby, the accused had committed an offence punishable under Section 7 of the Corruption Act, 1988.

2.4. In the course of same transaction, on 06.09.2008, at about 12.30 hrs, the accused by corrupt or illegal means and by abusing his official position, obtained the bribe amount and thereby, committed an offence punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2.5. The accused was arrested and on appearance of the accused, charges were framed against him for the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the prosecution examined PW1 to PW17 and marked Ex.P1 to Ex.P25 and also marked M.O.1 to M.O.4.

2.6. After completion of evidence on the prosecution side, the respondent/accused was questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating materials. The accused had denied the charges and filed a written reply.

2.7 In the written reply, the accused/respondent contended that he was appointed as Development Officer at Ambattur, KVIB on 24.03.2008 and that he had found certain irregularities committed by PW4 and PW7 in collusion with PW2 and other persons i.e., fabrication of false bills and made bogus claims. Therefore, he had initiated action against PW4 and PW7 and thereby, PW7 was transferred and they conspired to fix the liability on the accused by making a false complaint. Based on the said complaint, trap was conducted on the accused.

2.8. The trial court taking into consideration the materials available on records and after hearing the arguments acquitted the accused. Challenging the order of acquittal, the State has come up with this appeal

3. Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the appellant submitted that the trial court erred in acquitting the respondent/accused taking into consideration the minor discrepancies with regard to the call details, which have been marked as Ex.P14 to Ex.P16. The trial court erred in finding fault with the sanction granted holding that the sanctioning authority had not perused the call records and had not conducted any enquiry with regard to the same. The trial court had culled out certain minor contradictions and made a mountain out of a molehill in acquitting the accused. The trial court also took into consideration the minor discrepancies in the phenolphthalein test conducted and Ex.P17 the chemical analysis report. The trial court, erred in not believing Ex.P14 to Ex.P16 and having disbelieved the case of the prosecution with regard to Ex.P14 to Ex.P16, ought not to have relied on the same to acquit the accused. He further submitted that the findings of the trial court are perverse and it has to be set aside.

4. Learned counsel for the respondent/accused would submit as follows:

4.1. The respondent/accused is an honest officer, who worked in the footwear unit of KVIB. He was given additional charge as Assistant Director cum Development Officer at Ambattur office in the footwear unit on 24.03.2008 and later, he was given regular charge until 06.09.2008, the date of alleged trap. After he took charge on 24.03.2008, he found out certain malpractices committed by PW4 and PW7, who are his subordinates, in collusion with various suppliers, including the defacto complainant who had claimed amounts on bogus bills, without supply of goods and an action was taken against PW4 and PW7, at the instance of the respondent/accused. Hence PW2 had foisted a false case.

4.2. The trial court, after careful analysis of the call records and the evidence of PW10 had come to a conclusion that the evidence of PW2 is false and unreliable and that, the trap could not have been conducted in the manner as projected by the prosecution.

4.3. The trial court also found that the evidence of PW10 disproved the entire theory of demand. It is settled law that the theory of Demand and Acceptance must be proved by the prosecution in a cogent manner and only then, it can be said to have discharged its initial burden.

4.4. The respondent/accused by cross-examination of PW4 and PW7, elicited the motive, which is also accepted by them, during the course of cross-examination. The respondent/accused by pointing out the falsity of PW2 had disproved the case of the prosecution.

4.5. The trial court had acquitted the respondent/accused giving the benefit of doubt and disbelieving the witnesses of prosecution and findings of the trial court are based on a reasonable and possible view.

4.6. The trial court, on the overall analysis of the evidence has given the benefit of doubt and has found the respondent/accused not guilty. In such circumstances, the reversal of the acquittal can be permissible only if the conclusion recorded by the trial court does not reflect any reasonable and possible view and he would seek for dismissal of the appeal.

5. Heard Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the appellant and Mr.K.Ravi Anantha Padmanaban, Senior Counsel representing Mr.B.Thirumalai, learned counsel appearing for the respondent/accused and perused the materials available on record.

6. This Court has given its careful and anxious consideration to the rival contentions put-forth by either side and gone into the entire records and also perused the impugned judgment of acquittal.

7. At the outset, before going into the analysis and assessment of the entire evidence available on record and appraising the reasons assigned by the trial court for acquitting the respondent/accused, it is relevant to refer the judgment of the Supreme Court in ***Sampat Babso Kale and another vs. State of Maharastra, 2019 4 SCC 739*** with regard to principles relating to

appeal against acquittal and the relevant paragraph is extracted hereunder:

> *"8.With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses. This Court in Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , laid down the following principles : (SCC p. 432, para 42)*
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> > *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
> >
> > *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
> >
> > *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

8. Now coming to the present case, keeping in mind the above said principles laid down by the Hon'ble Supreme Court, regarding interference or non-interference, with the judgment of acquittal, by the Appellate court, it has to be seen as to (i) whether the trial court had properly analysed the evidence on record, (ii) whether the trial court had given clear, cogent, convincing and categorical reasons for acquitting the accused and (iii) whether the trial court took a possible, reasonable and justifiable view for acquitting the accused. To arrive at a conclusion, it is absolutely necessary to re-appreciate and analyse the evidence and assess the reasons assigned by the trial court for acquitting the respondent/accused herein.

9. In this case, the charge against the respondent/accused is that he had committed the offence punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The case projected by prosecution

is that PW2, the defacto complainant had alleged that on 05.09.2008 at about 9.30 hrs, he contacted the respondent/accused in his mobile phone regarding the payment from the footwear unit of KVIB and it is the case of PW2 that the respondent/accused informed him that he had received the amount of Rs.1,10,000/- from KVIB through a mail transfer and that, the respondent/accused had demanded an amount of Rs.20,000/- as illegal gratification for releasing the payment. It is also the case of PW2 that at 11.00 hrs on 05.09.2008, he met the respondent/accused at his office for which, the respondent/accused had told him that he would contact PW2 in the afternoon, as soon as the cheque was made ready besides confirming the demand of illegal gratification. When PW2 expressed his inability to pay Rs.20,000/-, the respondent/accused reduced it to Rs.15,000/-. On the same day, at about 15.40 hrs, the respondent/accused again contacted PW2 informing him that the cheque for Rs.1,10,000/- was made ready and had asked him to bring the demanded bribe amount of Rs.15,000/- at 11.00 hrs on 06.09.2008 (the following day) and to receive the cheque. PW2 not willing to pay the bribe amount, had given a complaint/Ex.P2 on 05.09.2008 at 17.00 hrs, based on which, Ex.P19/ FIR was registered on the same day at 17.30 hrs.

10. Pursuant to the same, a trap was organised on 06.09.2008 and at about 12.30 hrs, following which, when PW2 met the respondent/accused at his room, the accused had ascertained, whether PW2 had brought the demanded amount or not and upon confirmation, the respondent/accused allowed PW2 to receive the cheque from the accountant. After receiving the cheque, PW2 again met the respondent/accused and the respondent/accused had received the bribe amount of Rs.15,000/- from PW2 in his right hand and kept that amount in the right side table drawer and thereby had committed the offence punishable under Section 7 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

11. In order to prove the charge, the prosecution examined PW1 – the Principal Secretary, Handlooms, Handicrafts, Textiles and Khadi

Department; PW2 – Defacto complainant; PW3 – Superintendent of Directorate of Adi Dravidar and Tribal Welfare Department; PW4 – Junior Superintendent; PW5 – Khadi Assistant Grade II; PW6 – Khadi Inspector; PW7 – Supervisor; PW8 – Assistant; PW9 – Senior Accounts Officer; PW10 – Zonal Assistant Manager in Vodafone Company; PW11 – Nodal Officer; PW12 – Junior Telegram Officer; PW13 – Scientific Officer in Forensic Department; PW14 – Retired Deputy Superintendent of Police; PW15 – Retired Superintendent; PW16 – Additional Superintendent of Police and PW17 – Inspector of Police.

12. Likewise, Ex.P1 is the Sanction Order dated 16.09.2009, Ex.P2 is the complaint dated 05.09.2008 given by the defacto complainant/ PW2, Ex.P3 is the copy of the cheque dated 05.09.2008 for Rs.1,10,000/- issued by DO, KVIC in the name of Gulamali Ibhrahimji, Ex.P4 is the Entrustment Mahazar dated 06.09.2008, Ex.P5 is the Seizure Mahazar dated 06.09.2008, Ex.P6 is the house Search Jabitha dated 06.09.2008, Ex.P7 is the Cheque

Disbursement Register, Ex.P8 is the Tax Invoice dated 26.07.2008 raised by M/s.Gulamali Ibhrahimji, Ex.P9 is the Contingent Bill dated 05.09.2008 signed by Do, Footwear Unit, KVIC, Ambattur, Ex.P10 is the copy of Attendance Register Form in respect of September 2008, Ex.P11 is the Entry of M/s. Gulamali Ibhrahimji in Page No.39 of Cheque Disbursement Register, Ex.P12 is the Tax Invoice dated 09.07.2008 raised by M/s.Gulamali Ibhrahimji for Rs.72,468/-, Ex.P13 is the KVIC, Advice for mail Transfer for Rs.1,10,000/- on 04.09.2008, Ex.P14 is the Vodafone Senior Executive letter and call details dated 01.12.2008, Ex.P15 is the Bharti Airtel Ltd. Nodal Executive Letter dated 02.12.2008 with call details, Ex.P16 is the letter dated 20.11.2008 sent by PW16 and call details received from BSNL Chennai, Ex.P17is the Chemical Analysis Report dated 13.10.2008, Ex.P18 is the copy of the letter dated 05.09.2008 sent by Pw14 to Adidravida Welfare Commissioner, Ex.P19 is the First Information Report dated 05.09.2008, Ex.P20 is the Proceeding No.885/C/2006 dated 02.08.2008, Ex.P21 is the Form 91 dated 05.09.2008, Ex.P22 is the Section Alteration Report dated

06.09.2008, Ex.P23 is the Documents given by Chief Executive officer, KVIC, Chennai 108 dated 04.12.2008, Ex.P24 is the Note/Purchase committee 1 File Page 391 to 733 and Ex.P25 is the Rough Sketch dated 06.09.2008.

13. M.O.1 is the series of 12 Thousand Rupee notes, M.O.2 is the series of 6 Five Hundred Rupee notes, M.O.3 is the right hand wash solution bottle and M.O.4 is the left hand wash solution bottle.

14. In order to prove the initial demand prior to the trap and the demand on the trap date, the prosecution had relied on Ex.P14 to Ex.P16 and the call detail records. The burden is caused on the prosecution to prove the initial and further demand made by the accused. With regard to the call details of mobile number of PW2 9884091529, the prosecution has examined PW10, the Assistant Manager of Vodafone Mobile service Company. Ex.P14 /CDR provided by vodafone is from 05.08.2008 to 10.09.2008. PW10

in his cross examination had admitted that on 05.09.2008, there was no outgoing call to any person at 9.30 am from the above said mobile number of PW2. Therefore, the allegation of PW2 in his complaint/Ex.P2 that he made a call to the accused on 05.09.2008 at about 9.30 hrs was found to be false and incorrect.

15. Likewise, PW10 had also further admitted that on 05.09.2008, no call had been made to PW2, either from the landline in the office of the accused or from the mobile number of the accused. Thus the demand on 05.09.2008 through phone was found to be false. On the date of trap i.e., on 06.09.2008, PW10 had admitted that no call has been made from the mobile number of PW2 at 11.00 hrs. This aspect creates doubt with regard to the theory of demand of bribe.

16. It is the case of PW2 that on 06.09.2008 at about 8.00 hrs., he was at the office of DVAC, Adyar and as per the evidence of PW10 at 9.16 hrs. on 06.09.2008, the location of PW2 was found near Presidency College and that, he was around that location until 9.26 hrs. When this is taken into

consideration, the evidence of PW3 and PW15 would expose that the claim of the appellant with regard to the demonstration of the phenolphthalein test procedure and explanation of the significance of the trap proceedings between 8.00 hrs. to 12.30 hrs. at the office of DVAC was also found to be doubtful.

17. From the perusal of the evidence, it is seen that PW2 is not new to the office of the accused and he had been supplying the raw materials to KVIB for several years and he is aware of the entire procedures for obtaining payment etc. The categorical admission of the PW2 that once the cheque is ready, he could get it from the Accounts Manager and further his admission that he had first received the cheque from the accounts Department for Rs.1,10,000/- and thereafter he met the accused to handover the bribe amount is also found to be unbelievable. Once the cheque was received, there is no necessity of PW2 to come back to the accused to claim the amount that was

made ready on the recommendation of the respondent/accused.

18. On going through the evidence with regard to motive and enmity, the respondent/accused had initiated proposals to take action against PW7 and had also issued a memo to PW4 for dereliction of duty and for creating fake bills. It is the evidence of PW5 that based on the complaint given by the respondent/accused, disciplinary enquiry was conducted against PW7 and he was suspended. It is the case of the respondent/accused that since he had taken action against PW4 and PW7 for causing loss to KVIB, they conspired with one Velayutham, who was a political P.A to the then Minister and that all the three of them have used PW2 to lodge a false complaint Ex.P2. This aspect has been proved by the telephonic conversations between PW2's mobile number 9884091529, mobile number of P.A. Velayutham - 9344318008 and the mobile number of PW7 - 9840102649 and this aspect also got exposed by the CDR (Call Data Register) of PW2. While perusing Ex.P14, the outgoing call list dated

05.09.2008 from 07.38 hrs. to 09.04 hrs, several calls got exchanged amongst them and the duration of the calls were 3.32 minutes, 4.17 minutes, 1.67 minutes and so on . Likewise on 06.09.2018 also, at 9.16 am itself PW2 made a call to political P.A. on 9344318008. Further at 10.51 am to PW7; at 2.17 pm to the political P.A; at 2.17 pm to PW7; at 2.47 pm to the political P.A.; at 7.50 pm to PW7; and from 8.40 pm to 9.40 pm to PW7 and on the subsequent dates also. In the same manner, while perusing the incoming call register, it is seen that on 05.09.2008 at about 09.06 pm, the political PA has called PW2 and again on 06.09.2008, the political P.A. called PW2 at 8.00 am and against at 9.26 am and 9.34 am. During the relevant time, PW2 was at Lingichetty Street location at 8.00 am, at Presidency College at 9.26 am and at ICICI towers, Triplicane. This aspect would prove that PW2 and PW7 with the help of PA to Minister had conspired to dislodge the accused. The trial court had also taken this aspect into consideration for acquitting the respondent.

19. Further now coming to the evidence of prosecution, with regard to phenolphthalein test and the chemical analysis, it is the admitted case of the prosecution and the evidence of TLO /PW16 and PW13 that the accused had received the amount on his right hand and kept it in the table drawer and that when the phenolphthalein test was conducted, only the right hand of the accused turned pink. Whereas, PW13 forensic expert had stated that examination of the two bottle solutions received from TLO disclosed the presence of phenolphthalein thus indicating that both the hands of the accused had proved positive. This aspect also creats doubt and suspicion regarding the trap and phenolphthalein test. The trial court had also taken into consideration all these discrepancies.

20. It is the contention of the learned Government Advocate that the trial court having disbelieved the call records with regard to the case projected by the prosecution, ought not to have accepted the same by way of defence. In this regard, before calling upon the defence to rebut the

presumption, a bounden duty is cast upon the prosecution to prove the case. Further the burden is on the prosecution to prove the case beyond the reasonable doubts and the burden on the accused is to disprove the case of the prosecution by preponderance of probabilities. The trial court having considered the entire materials on records and having seen the demeanour of the witnesses disbelieved the case projected by the prosecution and acquitted the respondent/accused. The view of the trial court in acquitting the respondent/accused is a probable and possible view. This Court does not find any illegality or perversity in the findings of the trial court. Further, this Court finds no justifiable reason to interfere with the impugned judgment of acquittal.

21. In the result, this Criminal Appeal is dismissed, confirming the impugned judgment of acquittal.

14.02.2024

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

To

1.The Special Judge and Chief Judicial Magistrate, Tiruvallur.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Tiruvallur.

3.The Public Prosecutor,
High Court of Madras.

4.The Section Officer
V.R.Section, High Court of Madras.

A.D.JAGADISH CHANDIRA, J.

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