



Crl.A.No.103 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2024

Pronounced on : 10.09.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.103 of 2017

D.Manoharan

.... Appellant / Accused

Vs

State by:

The Deputy Superintendent of Police

Vigilance and Anti-Corruption

Salem.

(Crime No.5 / AC / 2003)

.... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374 Cr.P.C. r/w. Section 27 of the P.C. Act, 1989, praying to set aside the judgment dated 30.01.2017 in Special C.C.36/2014 on the file of the Court of Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem.

For Appellant : Mr.N.A.Ravindran

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



CrI.A.No.103 of 2017

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JUDGMENT

The appellant herein was convicted for offences under Sections 7 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988, and was sentenced to one year rigorous imprisonment for offence under Section 7 and two years rigorous imprisonment for offence under Section 13(1)(d) of the said Act, besides, the Special Court has imposed on him a fine of Rs.5,000/- on each count, in default of which, an additional prison term of six months for offence under Section 7, and one year for offence under Section 13(1)(d) of the Act.

2.1 The prosecution line of defence opens as below :

- On 26.10.2001, a certain Karuppana Nadar passed away. His grandson is P.W.2. He is the defacto-complainant in this case. Sometime in March, 2003, P.W.2 had applied for death certificate of his grandfather Karuppana Nadar. P.W.2 made Ext.P3, application for obtaining the death certificate of Karuppana Nadar.
- The appellant/accused was a Junior Assistant in Taluk Office, Vazhapadi. He was incharge of issuance of birth and death certificate



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Crl.A.No.103 of 2017

desk. Since the death of Karuppana Nadar was not registered, he approached P.W.2 for obtaining necessary certificate/report from the VAO concerned. P.W.2 would now return with this certificate and approached the appellant again. The appellant would now direct P.W.2 to approach the concerned Judicial Magistrate Court for obtaining necessary orders for registering the death of Karuppana Nadar. Accordingly, P.W.2 approached the concerned jurisdictional Magistrate who instituted necessary proceedings. On 30.05.2003, P.W.2 had obtained an order from the Court for registering the death of Karuppana Nadar.

- Thereafter on 02.06.2003, P.W.2 approached the appellant herein with his earlier application along with the order of the Court. Nothing happened on those papers for next 20 days. It is in this backdrop, P.W.2 approached the appellant on 24.06.2003, and enquired about the death certificate. The appellant would now direct P.W.2 to approach the record clerk of the Taluk Office, and when so approached, the said record clerk had directed P.W.2 to obtain a report from VAO.
- After complying with such directions, on 26.06.2003, P.W.2 returned to the Taluk Office along with the report of the VAO, and after paying



Crl.A.No.103 of 2017

necessary charges for obtaining the death certificate, he met the appellant again. It was on that date, the appellant is alleged to have demanded Rs.250/- as bribe.

- P.W.2 would again met the appellant on 27.06.2003, and the appellant continued to insist his earlier demand for Rs.250/-.
- It is in these circumstances, P.W.2 has preferred Ext.P2 complaint before P.W.9 at around 10.00 a.m., on 30.06.2003, receiving which, P.W.9 registered Ext.P24, FIR.
- At 12.00 noon on that date, vide Ext.P27, P.W.9 sent a requisition to the Superintending Engineer, TWAD Board, Salem to make available P.W.3 and one Chellaiah to be the trap-witnesses. After complying with the preliminary proceedings for laying the trap, the Investigating Officer sets up P.W.2 with five 50/- rupee notes smeared with naphthalene powder after noting down their numbers in the presence of the trap-witnesses, and left P.W.2 and P.W.3 at the Taluk Office. He had also instructed P.W.2 to give necessary signal in the manner the latter was instructed to give.
- P.W.2 went into the Taluk Office at about 04.15 p.m., and did not find the appellant in his seat. Later the appellant arrived and P.W.2 had



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Crl.A.No.103 of 2017

handed over five 50/- rupee currency notes as was instructed to him by P.W.9.

- Curiously enough P.W.2 would get back two of those five currencies, and gave necessary signal to the trap team. The trap team entered the Taluk Office and completed the remaining part of the test. The time was between 4.40 p.m., to 4.50 p.m., when appellant was found to possess three 50/- rupee notes, which was set up for trapping him.
- P.W.9 promptly arrested the appellant immediately after preparing necessary mahazar.
- Later P.W.9 applied to P.W.1 to obtain Ext.P1 sanction. He would record the statement of witnesses, completed the investigation and P.W.10 laid his final report, wherein he had accused that the appellant had committed offence under Section 7 and Section 13(1)(d) of PCA.

3. The trial Court took cognizance of the offence and framed charges for the aforesaid offences, which when confronted to the appellant, the later denied.

4. The matter went to trial, during which the prosecution examined P.W.1 to P.W.10. The prosecution also produced Ext.P1 to Ext.P27 and also M.O.1 to



Crl.A.No.103 of 2017

M.O.7
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5. After appreciating the evidence made available by the prosecution, the learned Special Judge found the appellant guilty of the charges he was accused of and sentenced him, as stated in the opening paragraph. This judgment of the trial Court is now under challenge.

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

- a) The conduct of P.W.2 that sets in motion the trap for the appellant carries significant elements of artificiality. Here is a certain P.W.2 who makes a statement in Ext.P2 complaint that the appellant demanded Rs.250/- as bribe, sets up five 50/- rupee notes smeared with naphthalene powder but hands over Rs.250/- and obtains back Rs.100/-. If according to P.W.2, the appellant was steadfast in his demand for Rs.250/- right from 26.06.2003 as well as on 27.06.2003, it is incongruent to reason why the appellant should return back two 50/- rupee notes which was part of the bribe sum, back to the bribe giver. This fact though in itself may not be adequate to prove the cognizance of the accused, yet, has to be read not in isolation but in



Crl.A.No.103 of 2017

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conjunction with other aspects.

- b) The day chosen for trap was 30.06.2003. It was the last day of the month. On the last day of every month, the appellant was under an official assignment to go to the Treasury at Salem which admittedly is about 45 kms from Vazhapadi Taluk office. Therefore, even if the prosecution line of the allegation were to be appreciated, then the appellant knowing fully well that he would be on other official duty on 30.06.2003, he would not have required P.W.2 to come with the bribe money on that date.
- c) Indeed D.W.2, the staff at the Salem Collectorate has testified that one Ponnuvel, the Assistant in Vazhapadi Taluk Office had given him a call on that evening at around 4.15 p.m. requiring him to direct the appellant to come to the Taluk office. And acting on the said call, when appellant was not found in the Taluk office, D.W.2 had gone to the house of the appellant, picked him in his motorcycle and dropped him at Salem old bus-stand. Taking into account the time required to travel from Salem old bus-stand to Vazhapadi, it would be difficult to presume that the appellant might have reached the Taluk office before 4.40 p.m., The prosecution has not been able to discredit the version



CrI.A.No.103 of 2017

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of D.W.2 as to the facts that he had spoken.

- d) P.W.5, the Tahsildar had testified in his cross-examination that after the trap, the appellant had told P.W.9 that he had earlier advanced Rs.150/- to P.W.2 and it is this money P.W.2 had returned. But when the money was repaid, he actually returned two 50/- rupee notes, because the loan amount by P.W.2 was only Rs.150/-, the appellant had returned the remaining Rs.100/- . Now P.W.5 is a prosecution witness and it is he who had testified this fact. Therefore, the prosecution was under an obligation to investigate whether Rs.150/- was part of the loan transaction or part of the bribe money. Now it is here the conduct of P.W.2 is not in harmony with the manner of the crime involving payment and receipt of bribe happened as projected by the prosecution.
- e) When trap happens, it brings a surprise to the accused. Caught in a situation such as that, he might not have too much time to create a false story that he has paid Rs.100/- back, because that Rs.100/- was in excess of the loan amount. This conduct of the appellant ought to have weighed by the trial Judge.



Crl.A.No.103 of 2017

7. The learned Prosecutor argued that the fact remains that the appellant was found to be in possession of those specific currency notes which were tested positive in the naphthalene test. Once the appellant is caught red handed in terms of Section 20 of P.C. Act, there is a presumption in aid of the prosecution and the burden is on the appellant to adduce necessary evidence to rebut it. This is not established in this case.

8. The rival submissions are carefully weighed. What is not in dispute by the defence is that the appellant was found to be in possession of three notes of Rs.50/- denomination, which proved positive in the naphthalene powder test, and very obviously, the burden is on him to produce such evidence as may be sufficient to rebut the presumption which Sec.20 of PC Act has created in favour of the prosecution. It needs to be underscored here that in all cases where any statutory presumption is created in favour of the prosecution, with the accused only been given an opportunity to rebut the effect of such presumption, the accused need not prove his rebuttal beyond all reasonable doubts, but only to the extent of creating a preponderating probability as to render the prosecution case shaky. The point here is whether the appellant has created circumstances as to improbabilise the prosecution case?



Crl.A.No.103 of 2017

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9.The appellant has come forward with three circumstances to rebut the presumption under Sec.20 of the PC Act, and their effect is now discussed:

- a) The first aspect is the probability of the appellant officially available in his office at 4.40 p.m. on 30.06.2003. On that date, the appellant was admittedly on other duty. Being the last day of the month, he was assigned the duty to present the salary bills at the District Treasury at Salem. Ext.P20, the attendance register states that the appellant was on other duty. It is neither denied by the prosecution, nor can it be denied by it. If that is so, why should the appellant return to Vazhapapadi Taluk Office, where lies the SOC? After all if he was the official who was to make ready the necessary papers for the Tahasildar (PW 5) to issue the death certificate to P.W.2, something IO contends in his cross examination, then, he still would want the same official for preparing the same set of papers the next day, and hence he could have required P.W.2 to come to the office on the following day (01.07.2003). The appellant need not have troubled himself travelling about 30 k.m. for receiving a paltry Rs.250/- as bribe, for the same could be obtained even on the next day. Here, the artificiality of the prosecution case lies in the fact that an



Crl.A.No.103 of 2017

WEB COPY

official, who was not on his official duty in his office but was on duty elsewhere, had returned to his office, travelling little over 30 k.m. for no official purpose, had offered to walk into the trap that was laid for him. The prosecution attempts to paint its story with lots of innocence, but it needs to be told that it hardly meets the eye of reason. Could the appellant have arrived back in his office, unless his presence was required by someone there? Here, the prosecution case strikes a blank, but it probabilises the defence version.

- b) The appellant would state that after his day's work at the Treasury he had returned to his house, but was summoned to arrive at his office. The intimation from his office was received by D.W.2 which he was on duty at the Collectorate, Salem, situated some 30 k.m from his office, and D.W.2 says that he had gone to the house of the appellant, informed him about the message received and dropped him at the Salem bus stand. Appellant's wife D.W.1 also speaks to this fact. The prosecution states that these witnesses might have been set up by the appellant, but then how else this fact could be proved? After all this appellant is a lower rung official at the Taluk Office, and that he was in his house could be



Crl.A.No.103 of 2017

WEB COPY

proved only by his wife and the one who dropped him at the bus stand. If only the appellant was on duty in his office that day, it would have been difficult for him to make the court believe a version such as the one he has now presented, but not when he was officially not required to be in his office on the date the trap had laid. Is there any difficulty for the I.O to lay the trap couple of days later, after a failed first attempt? Prosecution case shows tendency to wobble here.

- c) The third point is startling. P.W.2 would state that as was advised by the P.W.9, he handed over all the five Rs.50/- notes which were soon to be put to naphthalene test, but he got back two of the notes given. And why? It was because P.W.2 told the appellant that he had no money to go back home. And the bribe-taker suddenly had become a good Samaritan, and overpowered by his empathy for the bribe-giver, the former had returned Rs.100/- back to the latter. Is it believable? If the defence version is analysed, the accused would state that he had earlier lent Rs.150/- to P.W.2, but when the money was returned Rs.100/- as paid in excess, and that this excess Rs.100/- was returned to P.W.2. And this version is corroborated by P.W.5, the Tahasildar, who would depose in his cross



Crl.A.No.103 of 2017

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examination that after the trap, the appellant had told P.W.9 that the former had only received the money which he had advanced to P.W.2.

There is far greater credibility and probability which the version of the appellant has managed to create.

10. And, the next aspect is that, if as found by this court that the appellant had arrived at the Taluk office after travelling 30 k.m. by a public transport system, then going by the version of D.W.2, it is least likely that he could have been at his office at 4.40 p.m when according to D.W.2 he had dropped the appellant at the Salem bus stand only around 4.30 p.m., on 30.06.2003.

11. Has not the prosecution come up with a badly penned script resulting in an unbelievably bad screen-play? This Court holds the case of the prosecution as projected somewhere lacks the credibility and the defence version is able pierce the prosecution case with greater assurance of probability of its version.

12. To conclude, this appeal is allowed and the judgment of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act), Salem, dated 30.01.2017 in Special C.C.36/2014 is set aside.



WEB COPY



Crl.A.No.103 of 2017

10.09.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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CrI.A.No.103 of 2017

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To:

- 1.The Special Judge
(Special Court for Trial of Cases under the
Prevention of Corruption Act)
Salem.
- 2.The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Salem.



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Crl.A.No.103 of 2017

N.SESHASAYEE.J.,

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Pre-delivery Judgment in
Crl.A.103 of 2017

10.09.2024