IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.183 of 2017

C.Elangovan .... Appellant / Accused

Vs

State rep by:
The Deputy Superintendent of Police
Vigilance and Anti-corruption CC-2
Chennai - 600 035. .... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the conviction and sentence passed against the appellant in C.C.No.5 of 2011 vide order dated 14.03.2017 on the file of the Special Court for Vigilance and Anti Corruption at Chennai and set him at liberty.

For Appellant : Mr.N.R.Elango, Senior Advocate
Assisted by Mr.M.Sathish Kumar

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

JUDGMENT

Challenging his conviction for offences U/s.7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, as well as the sentence imposed on him, this appeal is preferred.

2.The prosecution case runs as below:

a) The appellant was working as a foreman under the erstwhile TNEB. While so, PW2 had applied for conversion of his single phase electricity supply connection to three phase connection. For this, the appellant was alleged to have demanded a bribe of Rs.1,000/-. The first demand was made on 06.07.2009 and the second demand was made on 22.07.2009.

b) On 27.07.2009, PW2, the applicant for conversion of single phase into three phase electricity connection, filed his Ex.P4, complaint, receiving which PW9 registered Ex.P16 F.I.R. PW9 was also the Trap Laying Officer, and he began his proceedings for laying the trap. He planted 1 x Rs.500 and 5 x Rs.100 notes, all smeared with phenolphthalein powder for trapping the accused. After complying with the pre-trap procedure, the trap team, which included P.W.3 and P.W.4, the two shadow witnesses, proceeded to the office of the appellant. The plan was executed to perfection with PW2 tendering the bribe money and the appellant receiving the same.

c) PW10, the Investigating Officer, then took over the investigation and on completing his investigation, he laid his final report.

3.1 The learned Special Judge took cognizance of the offence, framed charges against the appellant and proceeded to try the same, since the appellant pleaded he was not guilty of the accusation made against him. During trial, prosecution examined PW1 to PW11, marked Ex.P1 to Ex.P21 and produced the MO1 to MO7. For the defence, the appellant examined DW1 and DW2 and also marked Ex.D1 to Ex.D4.

3.2 It appears during trial the appellant appeared to have rested his defence on procedural non-compliance of Rule 47 of the V & AC Manual, which required the TLO to record the statement of the accused once the trap was successful.

The trial Court has however, rejected it and has essentially laid emphasis on the fact that the appellant has not been able to come out with an acceptable explanation for the tainted money in his hands. It proceeded to hold the appellant guilty of the charges that were framed against him, and sentenced him as below:

Offence	***Sentence imposed***
U/s.7 of the Prevention of Corruption Act, 1988.	Rigorous Imprisonment for six (6) months and a fine of Rs.500/-, in default to undergo one (1) month simple imprisonment.
U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	Rigorous Imprisonment for one (1) year and a fine of Rs.500/-, in default to undergo one (1) month simple imprisonment.

The appeal is directed against this judgement.

4. The learned senior counsel appearing for the appellant made the following submissions:

a) On 22.06.2009, PW2 had filed an application for conversion of his single phase electricity connection to 3 phase electricity connection, but that got lapsed, as PW2 did not pay necessary charges for the same. It is in these circumstances, on 06.07.2009, vide Ext.P19, PW2 made a fresh application, and according to the prosecution case, on the same date, PW2 had remitted necessary charges as is evidenced by Ext.P3. According to the prosecution, after remitting the necessary charges, PW2 approached DW1, the Assistant Engineer at his room and enquired him when the meter would be fitted. According to him, the appellant, a foreman working under DW1, was present in the room and he made a demand for Rs.1,000/- in the presence of DW1. What is significant here is that, according to PW2, the appellant had made a demand for bribe money in the presence of DW1 and in the latter's room not for him exclusively but also for DW1. And in Ext.P16 FIR, DW1 was arrayed as A2, but he was eventually dropped from the case when the final report was laid. Indeed he was not even cited as a witness by PW10, investigating officer. It is a mystery as to why the prosecution chose to drop A2 from the case. PW10, in his cross-examination has not been able to explain it adequately. This would lead to the next question, for whom the appellant had received the money. If the money is intended for DW1, then the charge that could be laid against the appellant is only under Section 12 of the PC Act, but no charge under Sec.12 was framed against him.

b) According to PW2, on 06.07.2009, the date on which Ext.P19, application was given and money was remitted, the first demand was made but it was demanded for installing a 3 phase meter. However, the meter itself was fixed on 14.07.2009 as was spoken to by PW6, and the second demand comes after about a week on 22.07.2009, and PW2 would now change the purpose for which money was demanded and would say that it was demanded for issuing the consumer card for recording the electricity consumed. If only money was demanded for installation of the meter, then it had been done even without any payment of money. This would imply that there could not have been a demand on 06.07.2009.

c) In terms of Section 17 of the PC Act r/w Paragraph 43 of the Vigilance and Anti Corruption manual, it is imperative that a Trap Laying Officer should obtain prior sanction of the Superintendent of Police if the public servant in question falls within Groups 'C' and 'D'. In the instant case, the appellant belongs to Group 'C' employee and prior sanction of the Superintendent of Police should have been obtained. In this regard, PW9, the TLO, concedes that he did not obtain any prior sanction before laying the trap. And PW10, the investigating officer makes a statement that PW9 had stated in his 161(3) Cr.P.C. statement that he was given oral approval by the Superintendent of Police, something which PW9 did not speak to. A trap which did not adhere to the mandatory requirements of Section 17, necessarily cannot be taken cognizance of by the court, and once a trap fails on this score, the entire trap of the prosecution case shall necessarily fail.

d) The appellant was appointed as a helper vide Ext.D1, dated 15.06.1985 by his Chief Engineer. In terms of Section 19, only the officer who has the authority to remove the public servant concerned alone is treated as a competent authority to give sanction. While PW1, the Superintending Engineer makes a statement that he had the authority to remove a Group 'C' employee, the prosecution has not substantiated the same with any evidenciary material. Indeed when the appellant was suspended, PW1 has sought the permission of the Chief Engineer vide Ext.D3 for extending the period of suspension beyond 180 days. When an authority does not possess requisite authority to remove an employee, then he does not fall within the category of authorities specified in Sec. 19 of the PC Act for granting sanction. Therefore, Ext.P1, sanction as granted by PW1 fails, or at lest it becomes suspicious. When the sanction as accorded by PW1 itself becomes doubtful, necessarily the court may not treat the same as valid and the benefit should necessarily be given to the appellant.

5. Per contra, the learned Prosecutor made the following submissions :

a) The sanction under Sec.19 had been validly given since in terms of the Service Regulations of TNEB from July, 2000, the Superintending Engineer of the Circle or the Superintending Engineer (Operations) is the appointing authority for the Regular Work Establishment involving all category of general posts which are not covered by specific category of officers and it is also vested with the authority to remove anyone from the service under the Regular Establishment. Therefore merely because the Chief Engineer had issued the appointing order to the appellant, that does not ipso facto imply that it had taken away the authority of the Superintending Engineer to remove the appellant within the meaning of Sec.19 of the PC Act.

b) It is not in dispute that the accused had received the tainted currencies and he did not deny it since the trap had been successfully laid. Once this basic fact is established then the presumption under Sec.20 of the PC Act becomes operational. The burden therefore is on the appellant to explain that the money that he had received from P.W.2 was not the bribe money, or at least he did not know that it was intended to bribe him. This burden the appellant had not discharged.

c) The appellant cannot take advantage of the fact that P.W.2 had paid the bribe money to the appellant in the office room of D.W.1, the Assistant Executive Engineer. In the FIR, which led to the trap, accusation was made only against the appellant that he demanded bribe for doing what he was officially required to do without any extra legal gratification. The bribe money was also paid only to him. That it was paid in the room of D.W.1 does not imply that D.W.1 necessarily must have a role. While the respondent suspected his involvement and included D.W.1 in the case, investigation revealed his noninvolvement and hence he was dropped from the case. The appellant however, cannot try to draw strength from the case of D.W.1 to derive a collateral benefit for himself.

d) So far as the sanction under Sec.17 is concerned, its non-compliance, even if any, cannot nullify the legitimacy of the trap.

6. Replying the said argument, the learned counsel for the appellant contended that the Service Regulation of TNEB was not introduced in evidence but the court had relied on it. When an accused person challenges the validity of the sanction granted under Sec.19 on the ground that the authority who granted it does not have the authority to remove the accused person, then the burden is cast on the prosecution that the sanction as obtained by it has emanated from the authority who in law had the power to remove the accused person from service. In the present case, the prosecution has not produced the TNEB Service Regulation to make it a part of the record for justifying the validity of Ext.P-1 sanction.

Discussion & Decision

7.1 The appellant had raised two separate legal issues. One involves sanction under Sec.17 required before the trap proceedings, and the other is under Sec.19 required for prosecuting a public servant.

a) Turning to sanction under Sec.17, it only prescribes the officers who are empowered to investigate. There is no dispute that either P.W.9, the TLO or P.W.10, the investigating officer who filed the final report, were not authorised to investigate. After all, laying trap in anticipation of commission of the crime under the PC Act is part of the investigation, and it has not been established that any of the officials who had investigated the crime had no authority to investigate it.

b) Turning to the sanction under Sec.19 is concerned, the argument has been that since the Service Regulation of TNEB has not been produced as a piece of evidence to substantiate the validity of Ext.P1 sanction, it has to be suspected. This contention is preposterous and spacious. The appellant is told that he was part of the TNEB, that he ought to know the Service Regulation affecting his service. And, it is he who requires the court to disbelieve the validity of Ext.P1 sanction, and hence the burden is on him to establish it. To state it differently, every sanction under Sec.19 is presumed to be valid unless it is established by the defence that the authority who had granted sanction, had no authority in law to grant the sanction. All it requires is to confront the sanctioning authority during cross examination with the relevant provision of the Service Regulation and to discredit the validity of the sanction, and it does not require making the Service Regulation as part of evidence and requiring the trial court to interpret it.

7.2 Turning to merit, a demand for bribe cannot be established through direct evidence as it would be made in absolute secrecy, and hence it could only be inferred from the other two limbs necessary to constitute the offence. P.W.2 has a job to be done through the TNEB, and it is not in dispute. That the appellant had a role in having the said job done for P.W.2, is also not in dispute. That during trap, P.W.2 had paid the money and the appellant had received it. This cannot be disputed since the trap was successful. The only point is whether the appellant had received the money tendered by P.W.2 with the intent to receive it as bribe money, no matter what the intent of P.W.2 was in tendering the money. This intent is within the knowledge of the appellant and hence the burden is on him to explain. His explanation has been that it was received for and on behalf of the Assistant Engineer, and the only reason for the same was that the money was paid to him in the room of the Assistant Engineer. However, besides the fact that the money was paid in the room of the Assistant Engineer, there is nothing on record to establish that the appellant had received the money on behalf of the Assistant Engineer. The strategy of the appellant has been to deflect the criminal liability or at lest part of it, but it must be stated that there emerges an implied admission that the appellant had received the money knowing well that it was not legally permitted to be received. This clinches the issue.

8. To conclude, the appeal is dismissed and the sentence and conviction imposed vide judgment dated 14.03.2017 in C.C.No.5 of 2011 on the file of the Special Court for Vigilance and Anti Corruption at Chennai, is hereby

confirmed. The bail bond executed by the appellant/accused 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 the appellant/accused to undergo the remaining period of sentence.

08.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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To:

1.The Chief Judicial Magistrate
Special Court for Vigilance and Anti Corruption
Chennai.

2.The Public Prosecutor,
High Court, Madras.

N.SESHASAYEE.J.,

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Pre-delivery Judgment in
Crl.A.No.183 of 2017

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