IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 5.3.2024

Delivered on : 04.6.2024

CORAM

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

Criminal Appeal No.326 of 2017

A.Ramasamy ... Appellant

vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Namakkal.
(Cr.No.02/AC/2011) ... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. read with Section 27 of the Prevention of Corruption Act against the judgment dated 2.6.2017 in Spl.C.C.No.22 of 2012 rendered by the Special Judge/Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.S.Santhosh
Government Advocate (Criminal Side)

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Special Judge/Chief Judicial Magistrate Court, Namakkal in Spl.C.C.No.22 of 2012, the accused has come up with the present Criminal Appeal.

2. The appellant stands convicted and sentenced as under:-

Legal provision	***Sentence imposed***
Section 7 of the Prevention of Corruption Act, 1988	Two years simple imprisonment and a fine of Rs.1000/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988	Two years simple imprisonment and a fine of Rs.1000/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
The sentences shall run concurrently.	

3. At the relevant point of time viz., from 21.7.2009 to 26.7.2011, the appellant was working as Commercial Tax Office, Thiruchencode, Namakkal Districtand he was a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988.

4. The allegation levelled against the appellant is that he had

demanded a sum of Rs.15,000/- as illegal gratification from one K.Bharani (PW2) for issuing 'C' forms and accepted a sum of Rs.10,000/- by misusing his official position.

5. The case of the prosecution elicited from the evidence of the prosecution witnesses is as under:-

i) One K.Bharani, PW2, the de facto complainant, a resident of Thiruchencode has been running a shop in the name and style of J.B.Hydraulics at Thiruchencode-Sankagiri Main Road selling Hydraulic pipes required for JCB having purchased the same from other States. In connection with his business and to claim tax exemption, PW2 used to collect 'C' forms in lot from the Thiruchencode Commercial Tax Office once in three months for issuing the same to the Firms at other States by deputing his accountant Rajavelu, PW4.

ii) Accordingly, the de facto complainant had sent PW4 on 1.4.2011 with an application seeking 10 numbers of 'C' forms. By then, the appellant was the Commercial Tax Officer. He asked PW4 to come after 15 days since the process of closure of annual accounts was going on. When PW4, once again, approached the appellant after 15 days for issuance of 'C' forms, the appellant had asked PW4 to come after 15 days and ultimately, he insisted for the presence of the Dealer himself. Whileso, on 7.7.2011, when PW4 was deputed by the appellant with an application for issuance of 20 numbers of 'C' forms by correcting the number of 'C' forms already sought for. Since PW4 had hesitated and requested PW2 himself to approach the appellant, PW2 along with PW4 had approached the appellant on 7.7.2011 and by then, one Nagaraj from Andavar Engineering Works was also there since his accounts are also being dealt with only by the appellant.

iii) When issuance of 'C' form was insisted, the appellant had demanded a sum of Rs.15,000/- towards illegal gratification for issuing ‘C’ forms. Even when the de facto complainant expressed his grievance over stagnation in his business, the appellant had insisted for the bribe. Thereafter, the appellant enquired PW5 Nagaraj, who was then available near the de facto complainant, about his requirement and they both were interacting about levy of tax for the business proposed to be run by PW5 and then PW5 left the place. Thereafter, when the de facto complainant had requested for atleast a few numbers of ‘C’ forms contending that he did not bring any money, the appellant had issued 7 numbers of C forms, making it clear that the rest of the 'C' forms could be issued only on receipt of illegal gratification. The seven numbers of ‘C’ forms were received on production of copies of 7 bills, copy of which have been marked as Ex.P4 series.

iv) Subsequently, on 22.7.2011 at about 5.30 p.m., PW2 had, once again, approached the appellant for the remaining 13 numbers of 'C' forms, for which the appellant had insisted for the illegal gratification, which he had demanded earlier. When PW2 had expressed his inability to pay such a huge amount, the appellant had reduced it from Rs.15,000/- to Rs.10000/-. Since PW2 was not inclined to pay the bribe money, he had lodged a typewritten complaint, Ex.P5 with the Vigilance and Anti Corruption on 26.7.2011.

v) PW13, Thiru.Rangasamy, Inspector of Police, Vigilance and Anti Corruption, who received the complaint, Ex.P5 from PW2, had registered an FIR, Ex.P25 and sent requisition to the Deputy Director, Horticulture Department, Namakkal and the Assistant Electrical Engineer, Tamil Nadu Electricity Board, Valayapatti to depute ‘B’

Grade Officers to be witness for the trap proceedings.

vi) Accordingly, one S.Muthusamy, Junior Engineer from Electricity Board and one V.Manickam, Deputy Horticulture Officer, PW3 were deputed and they reported at about 1.00 pm on 26.7.2011. On their arrival, PW13 had introduced PW2, de facto complainant to the said witnesses and vice versa and apprised the witnesses about the complaint.

vii) Subsequently, PW13 had asked PW2 as to whether he brought the bribe money as demanded by the appellant and thereupon, PW2 had produced five currency notes of Rs.1000/- each and ten notes of Rs.500/- each. Those notes were given to the witnesses for counting and noting down the serial numbers of the same in the Entrustment Mahazar and thereafter, a demonstration was made for conducting the trap with the assistance of one Chandrasekaran, Head Constable to apprise of the official witnesses and the team members of the significance of the test and thereafter, the chemical content used for demonstration of trap was destroyed.

viii) Subsequently, PW13 had instructed PW2 to visit the office of the appellant alongwith PW3 and to given the money only if the appellant demands it and on receipt of money by the appellant, PW2 was instructed to come out and give signal by combing his hair backwards using his hand. PW3, official shadow witness was instructed to observe the entire proceedings. PW13 had also prepared Ex.P7 entrustment mahazar from 1.00 pm to 2.00 pm, which was duly signed by the de facto complainant, PW2, the prosecution witnesses and PW13 and sent the same to the jurisdictional court alongwith the FIR.

ix) Thereafter, the trap team containing the prosecution witnesses, police personnel and PW2 proceeded in the Government vehicle to the office of the appellant and reached Thiruchencode Bus Stand at about 3.20 pm. Having dropped PW2 and PW3 near the office of the appellant and reminded them about the instructions they need to follow, PW13, alongwith the official witness Mutusamy, stayed near a tamarind tree near the office of the appellant anticipating the signal from PW2.

x) PW2 and PW3, who went inside the office of the appellant, had come out at about 3.40 pm and PW2 had shown the pre-arranged signal to the team of PW13 and thereupon, PW13 and the team members rushed to the first floor of the office of the appellant and enquired PWs.2 and 3.

xi) On the narration made by PW2 about the demand and acceptance of bribe by the appellant and the same having been reiterated by PW3, the team of PW13 had entered into the office of the appellant, wherein, PW2 had identified the appellant to PW13.

xii) After introducing himself to the appellant, PW13 had enquired him. The appellant got nervous and prayed for pardon by joining both his hands and when enquired, he confessed having received the bribe money.

xiii) After pacifying the appellant, PW13 had commenced the phenolphthalein test. Sodium Carbonate mixture was made in two clean glass tumblers wherein, the appellant was made to dip his hands one by one. While the wash of the right hand turned pink the wash of the left hand turned light pink which was poured into glass bottles, sealed, labelled and signatures of the witnesses were affixed on the labels and the same were marked as M.Os.3 and 4.

xiv) Thereafter, PW13 had arrested the appellant at about 5.00 pm and when enquired about the bribe money, he had produced the same from the right side drawer of his table which was counted by the official witness Muthusamy. The serial numbers of the currency notes having been found tallying with that of the ones entered in the entrustment mahazar, the said currency notes were seized as M.O.s.1 and 2.

xv) Subsequently, when the drawer where the bribe money was kept was checked, PW13 found some 'C' forms relating to some other Firms and thereupon, PW13 had wiped those forms with a sponge and thereafter dipped the said sponge into the sodium carbonate mixture and having found that the content turned light pink, collected the said wash also in a glass bottle, sealed and labelled, whereupon signatures of the witnesses were affixed and marked as M.O.5. He also seized such 'C' forms, Exs.P26. The sponge so used, M.O.6 was also seized.

xvi) On further enquiry, the appellant had produced a diary and a sum of Rs.3040/- and informed that it is his personal money and thereupon, they were returned to him.

xvii) Thereafter, PW13 had enquired the appellant about the application given by the de facto complainant seeking 'C' forms for which the appellant had replied that it has been dealt with by B2 seat and thereupon, PW13 had enquired the Junior Assistant of B2 seat viz., one Deivasigamani and obtained the 'C' form register and the application given by the de facto complainant on 7.7.2011 and found that 7 numbers of 'C' forms alone were given to the de facto complainant as evidenced by Ex.P8. PW13 had also seized the application of the de facto complainant and Form 8 as Ex.P11. The signature of the appellant for receipt of such application is Ex.P27 and the endorsement made and initial affixed by him for issuance of seven numbers of 'C' forms is Ex.P13. He had also seized the attendance register as Ex.P19 evidencing the attendance of the appellant on 26.7.2011, which carries the signature of the appellant Ex.P28. PW13 had also enquired as to whether the de facto complainant had any dues in tax to be paid and confirmed that he had no dues. PW13 had prepared the recovery mahazar, Ex.P14 between 3.50 p.m. and 5.30 p.m. wherein signatures of the official witnesses were affixed and a copy of the same was issued to the appellant. PW13 had also prepared observation mahzar and rough sketch, Ex.P15 and P16 at 6:30 p.m. wherein the signature of the official witnesses were affixed. After obtaining prior permission, a search at the house of the appellant was made from 8.15 p.m. to 8:45 p.m. and having found no incriminating material, search report, Ex.P17 was prepared. After completing the house search PW13 had returned to the office at 9.00 p.m. and altered the legal provisions, as per the alteration report, Ex.P30, remanded the appellant and sent the material objects to the jurisdictional Court under Form 91, Ex.P31 and ultimately, PW13, after completing the investigation, submitted the case file to the Deputy Superintendent of Police, Vigilance and Anti Corruption for further investigation.

xviii) PW14 Thiru.Chandramouli, who was the Deputy Superintendent of Police, Vigilance and Anti Corruption, Namakkal from 30.4.2011 to 27.3.2013, took up further investigation of the case on 27.7.2011 and submitted a requisition to the court, for sending the Material Objects to Forensic Sciences Laboratory and accordingly, they were sent for forensic analysis and the report thereon is Ex.P24. Thereafter, PW14 had enquired the de facto complainant-PW2 and the official witnesses PW3, the other witness Muthuswamy, Rajavel-PW4, Nagaraj-PW5, Vignesh-PW6, Marisamy-

PW7, Sudarshan-PW8, Muhammad Ali-PW9, Srinivasan-PW10, one Deivasigamani and Diraviaraj-PW11 and recorded their statements. After obtaining the Forensic Sciences Report, PW14 had written a letter to the Commercial Tax Officer for issuing 'C' forms to the de facto complainant on 23.8.2012. PW14 had submitted the relevant papers to the Commissioner of Commercial Taxes, PW1 and obtained sanction, Ex.P1 for proceeding against the appellant and thereafter, enquired him and recorded his statement. After completing the investigation, PW14 submitted the final report.

6. The case was taken on file in Special C.C.No.6 of 2012 by the Special Judge/Chief Judicial Magistrate, Namakkal. On summoning, the Appellant/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined P.Ws.1 to 14 and marked Exs.P1 to P36 and produced Mos.1 to 6. On the side of the defence, D.Ws.1 and 2 were examined and Exs.D1 to D3 were marked.

7. On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had stated that he had been falsely implicated in the case.

8. The Trial Court, on considering the entire materials, found the accused/appellant guilty and imposed punishments, as referred to above, which is under challenge in the present Criminal Appeal.

9. The submissions of the learned Senior Counsel Mr.K.V.Sridharan, appearing for the appellant are as under:-

i) The sanction order, Ex.P1 has been given by PW1 mechanically without application of mind and thus, it is unsustainable in law.

ii) The evidence of P.Ws.2 to 5 are unbelievable. Whileso, the Trial Court failed to appreciate that in trap cases, it is the burden of the prosecution to prove the case beyond all reasonable doubts and the prosecution has not discharged such a burden in this case.

iii) The Trial Court failed to take into consideration the evidence of DW1 and Ex.D3 which would establish that the appellant was at Commercial Tax Office at Namakkal on 22.7.2011 at about 5.00 pm and not at Thiruchencode Office as alleged by the prosecution and thus, the demand of bribe is not proved by the prosecution.

iv) The court below failed to consider that mere recovery of money from the appellant will not prove the case against the appellant.

v) When the appellant had proved that the amount seized was received from PW2 towards the compound tax payable by him to the Government by marking Ex.D2 through DW2, the court below has erred in disbelieving the same and convicting the appellant and thus, the judgment of conviction rendered by the court below is liable to be set aside.

10. Mr.S.Santhosh, learned Government Advocate (Criminal Side) would submit that the prosecution has proved its case beyond all reasonable doubts with the cogent evidence adduced by the

prosecution witnesses. He would submit that the appellant was caught red handed and the prosecution has proved its case and raised a presumption against the appellant, but, the appellant has not rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988 and thus, the appeal is liable to be dismissed.

11. Heard the learned counsel appearing for the parties and perused the materials available on record including the written arguments filed on behalf of the appellant.

12. The allegation levelled against the appellant/accused is that he, being a Commercial Tax Officer, misusing his official position had demanded a sum of Rs.15,000/- from the de fact complainant/PW2 towards illegal gratification other than his legal remuneration for issuing 'C' forms and accepted Rs.10,000/- towards the same and caught red handed.

13. The case of the appellant in crux is that the amount seized from his custody was paid by the de facto complainant towards

compound tax levied on him for misuse of 'C' forms as evidenced by Ex.D2 series of three notices dated 1.6.2011 issued by the Department, which were served by DW2 Natesan on 6.6.2011 and the same falsifies the version of the prosecution witnesses with regard to demand and acceptance of bribe and prove that the trap is a stage managed one with the aid of interested witnesses.

14. The further case of the appellant is that the second demand alleged by the de facto complainant is said to have taken place on 22.7.2011 at 5.30 pm, however, at the relevant time and date, the appellant was at duty at Namakkal Commercial Tax Office for discharging his additional duty as evidenced by the evidence of DW1, who joined the office at Namakkal on 22.7.2011 as Deputy Commercial Tax Officer, which was further evidenced by the attendance register, Ex.D3 and thus, the evidence of PW2, the de facto complainant with regard to demand of bribe by the appellant is wholly unreliable and thus, the appellant has rebutted the presumption sought to be raised against the appellant by preponderance of probabilities.

15. Thus, the defence taken by the appellant is mainly two-fold. One being that the money seized was not at all a bribe money, instead, it was collected towards compound fee levied by the Department against the de facto complainant and having nurtured grudges against the appellant on the same, he had falsely implicated the appellant in the trap case by pretending that the amount paid by him was towards the demand of bribe made by the appellant. The other strong contention made by the appellant is that he had proved clearly that on the day and time, viz., 22.7.2011 at 5.30 pm, when the second demand was alleged against the him, he was at duty only at Namakkal and not at Thiruchencode and thus, the entire case of the prosecution is surrounded by suspicion.

16. Sofar as the first contention is concerned, the appellant relies on the evidence of DW2 Natesan and Ex.D2 series of notices claiming that those notices were served on the appellant by DW2 Natesan as evident from the endorsement made in Ex.D2 series. However, it is seen that DW2 Natesan, an Office Assistant from the

office of the appellant, during his cross examination, clearly admits that with regard to Ex.D2 series notices, there is no entry in the Tapal Register maintained in their office despite such a practice being strictly followed by them. The clear admission of DW2 with regard to the maintenance of Tapal Register and Ex.D2 series of notices not being entered in the same creates a strong doubt as to whether the same are created for the defence.

17. When the issuance of Ex.D2 series notices itself is surrounded by suspicion, the claim of the appellant that the compound tax so levied was received by him from the de facto complainant directly in cash when the meagre payment towards 'C' forms itself was being paid through Bank as evident from Ex.P3 receipt, strengthens such suspicion, especially when all the three such notices relating to the years 2007 and 2008 were issued all of a sudden on 1.6.2011 and claimed to have been served on 6.6.2011 without any proof of entry in the Tapal Register. It gets further strengthened when the prosecution witnesses viz., P.Ws.7 to 11, being staff concerned from the Commercial Tax Office would contend

that there was no outstanding from the de facto complainant payable to the Department.

18. With regard to the second contention viz., that the appellant was on duty at Namakkal on 22.7.2011 at 5.30 pm, the date and time when second demand was alleged to have been made by the appellant, the appellant relies on the evidence of DW1 Selvi.Bharathi and Ex.D3 attendance register. It is the case of the appellant that at the relevant point of time, the appellant was given additional charge as Assistant Commissioner of Commercial Tax Office, Namakkal apart from the post of Commercial Tax Officer, Thiruchencode and thereby, he was on duty at Thiruchencode on 22.7.2011 in the afternoon after serving at Thiruchencode in the forenoon.

19. Of course, a perusal of Ex.D3, attendance register discloses that DW1, Selvi.Bharathi had joined the office at Namakkal as Deputy Commercial Tax Officer on 22.7.2011 at about 5.00 pm. But, it

appears that the endorsement with regard to such joining has been made by one Tmt.Rathinam, Deputy Commercial Tax Officer and the same has been signed by the appellant only in approval of the same, however, the appellant has not initiated any steps to examine the said Tmt.Rathinam to speak about such endorsement. Further, DW1, during her cross examination, admits that she had not seen the appellant affixing his signature under the said endorsement. Therefore, the appellant had failed in his attempt to raise a presumption that on the particular day viz., 22.7.2011 at 5.30 pm, he was on duty only at Namakkal and not at Thiruchencode and thereby to falsify the second demand alleged by the prosecution.

20. While the appellant could not succeed in his attempts to disprove the case of the prosecution, a perusal of the evidence adduced by the prosecution witnesses viz., PW2-de facto complainant, PWs.3 to 6 and the Trap Laying Officer, PW13 have clearly and cogently spoken about the demand, acceptance and recovery of the bribe money by the appellant raising a presumption against the appellant, which has not been rebutted by the appellant.

Further, a perusal of the evidence adduced by PW1, sanctioning authority would disclose that he had analysed the defence taken by the appellant and after considering the entire materials placed before him, had issued the sanction order to proceed against the appellant.

21. A perusal of the judgment of conviction rendered by the Trial Court would disclose that the Trial Court had gone into every individual aspect and found the appellant/accused guilty for the offences alleged and rightly convicted him thereunder, which does not warrant any interference.

22. In the result, the Criminal Appeal fails and the same is dismissed. The Trial Court is directed to secure the accused to enable him to serve the remaining period of sentence.

04.6.2024

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Special Judge/
Chief Judicial Magistrate Court,

Namakkal.

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

3. The Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.326 of 2017

Delivered on
04.6.2024