IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2024

Pronounced on : 06.12.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.585 of 2017

T.M.Subramaniam .... Appellant / Accused

Vs

State represented by
Deputy Superintendent of Police
Vigilance and Anti-corruption, Erode
Erode District
(Crime No.12/AC/2002/ER) .... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the conviction and sentence passed imposed on the appellant by the Chief Judicial Magistrate cum Special Judge, Erode District, Erode in Spl.C.C.No.5 of 2015 dated 24.08.2017.

For Appellant : Mr.V.Gopinath, Senior Counsel
Assisted by Mr.V.Rajamohan

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

JUDGMENT

This appeal is directed against the judgment convicting and sentencing the appellant for offences under Section 7 and Section 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act, in Special C.C.No.5 of 2015 on the file of Chief Judicial Magistrate cum Special Court, Erode. The sentence imposed on him is detailed below:

Offences	***Sentence imposed***
Section 7 of the Prevention of Corrption Act	One year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment
Sec.13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act	One year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment

The sentences were directed to run concurrently.

2. The case of the prosecution runs as below:

a) In November 2002, the appellant was working as a Village Administrative Officer at Santhipalayam Village, Gobichettipalayam.

b) While so, on 05.11.2002, P.W.2, the defacto complainant approached the appellant for obtaining a death certificate of his father and grandfather, as well as a legal heir certificate, to redeem some of the documents pledged in a certain bank. The appellant would demand a bribe of Rs.1,500/- for issuing the certificates. P.W.2 informed the appellant of his financial inability to pay the sum demanded.

c) On 11.11.2002, P.W.2 again met the appellant and after some serious negotiations on that day, the appellant was said to have made a claim down in his demand, and required P.W.2 to pay Rs.500/- at the first instance for issuance of death certificates, and left the demand for the balance Rs. 1,000/- to be considered later.

d) Unwilling to pay the bribe sum as demanded by the appellant, on 13.11.2002, P.W.2 preferred Ext.P4 complaint with the respondent, receiving which, P.W.14 registered Ext.P25, FIR., at about 8.45 a.m on the same date.

e) P.W.14 would now prepare his trap team comprising of P.W.3 and one Thirugnanasambandam as shadow witnesses, and proceeded to complete his pre-trap protocol. Rs.500/-, made up of Rs.100 x 5 , all smeared with phenolphthalein powder, was entrusted with P.W.2

under Ext.P6 mahazar between 10.40 a.m., and 11.45 a.m.

f) The trap team landed at the office of the appellant at 12.45 in the noon, but the office was locked. The trap therefore, failed and the team returned and P.W.14, prepared his Ext.P4, closure mahazar.

g) P.W.14 would now proceed to organise a second trap with the same team on the following day (14.11.2002). The team landed at the office of the appellant at around 8.30 a.m. As planned P.W.2 carrying with him the planted currenices went to the office of the appellant along with P.W.3 and Thirugnanasambandam for trapping him. When P.W.2 went inside the office of the appellant, he was with four other persons. P.W.2, therefore waited for another two and a quarter hour. After the foursome had left, at 1.05 p.m., P.W.2 along with P.W.3 went into the room of the appellant and tendered the tainted money to the appellant. The appellant received it and kept in his office drawer.

h) Soon P.W.2 would alert P.W.14, and the latter descended on the scene with the other shadow witness, and completed the rest of the procedural formalities. The trap indeed was successful. The tainted money was recovered by P.W.14 under Ext.P9 seizure mahazar.

i) The further investigation was taken over by P.W.15, and on completing the investigation he laid the final report.

3.1 The trial Court framed necessary charges against the appellant as detailed in the opening paragraph of this judgment and proceeded to try the appellant for the same. During trial, the prosecution examined P.W.1 to P.W.15, marked Ext.P1 to Ext.P29, and M.O.1 to M.O.5. For the defence, the appellant examined himself as D.W.1 and marked Ext.D1 to Ext.D13.

3.2 On appreciating the evidence before it, the trial Court found the appellant guilty of the offences that he was charged with and sentenced him as indicated above. This judgement of the trial Court is now under challenge in this appeal.

4. Mr.V.Gopinath, learned Senior Counsel appearing for the appellant made the following submissions:

a) According to the case of the prosecution, the first demand for bribe was made on 05.11.2002. But, it is an incredible accusation since the evidence on record establishes a different fact. Prior to

06.11.2002, the appellant was a Village Administrative Officer of Santhipalayam Village. The village office in relation to which the offence had taken place was Avalampalayam Village. Indeed, P.W.2 is a resident of Avalampalayam Village. Prior to 06.11.2002, a certain Subramaniam (a name sake of the appellant) was the VAO of the Avalampalayam Village. From 25.10.2002 to 31.10.2002, he did not report for duty. It is in these circumstances, the Tahsildar concerned had issued Ext.D4 proceedings, dated 06.11.2002, directing the appellant to assume additional charge of Avalampalayam Village. P.W.5, the Deputy Tahsildar of the concerned Taluk speak to these facts. This implies on 05.11.2002, the appellant had no official duty to discharge at Avalapalayam village. This belies the accusation of P.W.2 that he had met the appellant on 05.11.2002 at Avalampalayam Village Office enquiring about the death certificates etc., and it could either be false, or could be a lie. This would now mean that the first demand for bribe said to have been made on 05.11.2002 goes.

b) According to the prosecution, it was on 11.11.2002, that P.W.2 had met the appellant for the second time when there had been an alleged bargain to bring down the bribe money. If there was no possibility for the initial demand, then it makes it near impossible that there could have been a negotiation to bring down the bribe sum from Rs.1,500/- and that an agreement was arrived to pay Rs.500/- at the first instance.

c) But P.W.2 had still alleged to have paid Rs.500/- as planted by the TLO on 14.11.2002 and that the appellant had received it. This allegation is sought to be established by the prosecution on a slippery plane. Here, the following facts become relevant:

- P.W.2's father died on 11.12.1997. His death certificate could be issued only by the Kunathur Taluk office, and any application for issuing a death certificate could neither be entertained, nor cannot be processed by the Avalampaalayam VAO in 2002.
- It is true, the prosecution had filed Ext.P17 Death Certificate of P.W.2's grandfather Senniappagounder. His Death Certificate could be issued only by the Taluk Office, Gopi. The appellant as D.W.1 had merely signed a blank form, believing that it was intended for issuing the

death certificate of certain Rakkianna Gounder. This Rakkianna Gounder had died on 18.10.2002. In all cases, where a person dies, the VAO can issue death certificate only for 30 days from the date of the death of an individual. Ext.P17 was filled up Pazhani, in collaboration with P.W.2. Village Assistant Pazhani had died at the time of trial.

- About five years prior to 11.07.2005, when the appellant was working as a VAO of Avalampalayam Village, there was a partition dispute between a certain Natchimuthu, P.W.2 and few others. The appellant as a local VAO tried to intervene to pacify them and this had brewed enmity between them. This eventually led to Natchimuthu preferring a complaint based on which Ext.D2 FIR was registered by Nambiyur Police Station *inter alia* against P.W.2. Eversince, P.W.2 was nurturing enmity against the appellant. This had been suggested to P.W.2.
- Turning to the alleged factum of the appellant receiving the money is concerned, the line of the case is that on

14.11.2002 appellant's mother was hospitalized and therefore, he had required Pazhanisamy, the Village Assistant, who had also been his Village Assistant when the appellant was working as VAO at Avalampalayam Village prior to his transfer to Santhipalayam Village, to bring Rs.5,000/-, which the appellant had kept in a rexine bag in his house plus Rs.100/- for his expenses. Pazhanisamy had brought the money and kept the entire money in the drawer of the appellant. When the TLO required the appellant to get the money from the drawer, it was then, he found an additional Rs.500/- planted by P.W.2. In other words, P.W.2 might have used the services of Pazhanisamy to leave the money in the table. After all, Pazhanisamy is a local Village Assistant and P.W.2 was also hailing from the same village and as between them, there is a possibility of greater acquaintance. In its judgement, the Trial Court had directed return of Rs.5,000/- to the appellant.

Relying on the Authority ***Neeraj Dutta vs. State (Government of NCT of***

Delhi) [(2023) 2 SCC (Cri) 352], the learned senior counsel submitted that where there is no demand, not only no offence under Section 7 is constituted, but it will not even constitute obtainment within the meaning of Sec.13(1) (d) (i) and (ii) of the Act.

5. The learned prosecutor submitted that the fact remained that the trap as laid by P.W.14 was successful, and that the planted Rs.500 was receovered along with the appellant's personal money of Rs.5,000/- was eventually recovered from his table-drawer. Once the trap test proved positive, the presumption under Sec.20 of the PC Act comes to play, and it instantly casts a reverse burden upon the appellant to explain why he accepted the currency. Here the appellant has introduced a character Palanisamy, a Village Assistant, who might have planted the currency in the table-drawer of the appellant along with the cash of Rs.5,000/- which he had required Palanisamy to bring from his house. In other words, his line of defence was that Palanisamy had played foul and well into the hands of P.W.2, as the latter nurtured an enmity against the appellant owing to his intervention in a partition-dispute which led to the registration of a criminal case against P.W2 and others. But beyond suggesting his line of defence there is nothing

on record to create an evidentiary possibility for the same. If the line of this defence becomes unbelievable on evidence, necessarily, the reverse burden cast on the appellant cannot be said to have been discharged. Secondly, on the point of Ext.P17 is concerned, the appellant as D.W.1 has admitted that P.W.2's grandfather Chenniappa Gounder had died only on 23.10.2002, and hence even going by his testimony, the death certificate could be issued by the VAO till 23.11.2002. Thirdly, so far as the partition dispute involving P.W.2 which had brewed enmity because the appellant intervened in it are do nt have foundation. If Ext.P17 is true, then there is every reason for P.W.2 to approach the VAO Avalampalayam for obtaining his Death Certificate.

Discussion & Decision

6. The issue is whether the appellant could have demanded bribe on 05.11.2002, and if no demand was possible on 05.11.2002, then could there have been a fresh demand on 11.11.2002. This is the first part. The second part is how the planted currencies found its way into the table-drawer of the appellant. After all the money was eventually recovered from the table drawer of the appellant. Since the burden to explain it is on the appellant, in the eventuality of his inability to explain it convincingly, is it not permissible

to draw an inference of a demand for bribe made therefrom?

7.1 Turning to the first demand on 05.11.2002 is concerned, it is not just a false statement, but can only be a lie, nonchalantly made before the Court, for the appellant was not the regular VAO of Avalampalayam, but of an adjacent Santhipalayam village. And he was given additional charge as the VAO of Avalampalayam only on 6.11.2002 and this was borne out by the evidence of P.W.5 and supported by Ext.D4 proceedings of the Tahasildar, dated 06.11.2002.

7.2 However, on 11.11.2002, the appellant indeed had been the VAO in charge of Avalampalayam. It is not his case that he was not there at the office of VAO, Avalampalayam on that day. Now, merely because there is no possibility of an initial demand on 05.11.2002, there could never be a possibility for a demand on 11.11.2002 cannot be readily inferred. It depends on how well the appellant discharges the reverse burden cast upon him.

8 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], I had an occassion to state the law 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 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. <u>What does a trap-test establish</u>? 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 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 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 aceptance 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.*

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.*

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)."

9. Since testimony of P.W.2 could be of an interested person, this Court opted to scrutinize the evidence of P.W.3, one of the two shadow witnesses to the trap-test. He makes a statement that the planted currency was taken out from the table drawer by the appellant after the conclusion of a successful trap-test in which the appellant's hands turned pink when they were dipped in sodium carbonate solution. This part of the testimony of P.W.3 was not adequately discredited during cross examination. And it was reiterated by

P.W.14 the TLO, and nothing emerged to suspect the same either. If the planted currency was kept inside the table by Palanisamy without the knowledge of the appellant, as has been contended by the latter, then unless he had touched the planted currency before hand, the trap-test could not have been positive. After all, going by the testimony of P.W.3 and backed by the testimony of P.W.14, appellant had touched the planted currencies only at the time of taking the same from his table drawer only after the trap-test. This court therefore, does not consider that the appellant had discharged the reversed burden cast on him adequately. And, it is not just the case of receipt of planted currencies, but also one of accepting them since they were removed from his table-drawer. Since this court has found that the appellant had received the money, necessarily an inference of demand for bribe can be made. Even if the demand on 05.11.2002 is an impossibility, a demand on 11.11.2002 is evidently possible. And, it completes the proof of the triple criteria required to bring home the guilt of the accused person.

10. To conclude, the appeal is dismissed and the judgment of the Chief Judicial Magistrate cum Special Judge, Erode District, Erode in Spl.C.C.No.5 of 2015 dated 24.08.2017, convicting the appellant is hereby confirmed. His

bail bond is cancelled, and he is required to surrender before the trial Court on or before 17.01.2025, 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.

06.12.2024

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

1.The Chief Judicial Magistrate cum
Special Judge,
Erode District, Erode.

2.The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

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Pre-delivery Judgment in
Crl.A.No.585 of 2017

06.12.2024