



Crl. A. No.733 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.733 of 2017

R.Samuel

... Appellant

Vs.

State by Inspector of Police
Vigilance and Anti corruption
Chennai

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records of the Special court for cases under Prevention of Corruption Act at Chennai and set aside the judgment of the learned Special Judge dated 14.11.2017 passed in C.C. No.125 of 2011.

For Appellant : Mr.L.Mahendran

For Respondent : Dr.C.E.Pratap
Govt. Advocate (Crl. Side)

JUDGMENT



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This appeal is directed against the judgment convicting and sentencing the appellant for an offence under Section 7 as well as Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution unfolds as below:

- In October 2009, the appellant herein was working as Sanitary Inspector in Division 78 of Chennai Corporation. He was also in-charge of Division 74. PW2, the de-facto complainant was working as sanitary worker in Division 74.
- PW2 was on medical leave between 01.06.2008 and 30.05.2009 and he joined duty on 31.05.2009.
- In the meantime, the Government implemented the recommendations of the 6th Pay Commission from 01.01.2009. In this backdrop, PW2, on joining duty on 31.05.2009, met certain Venkatesan, Maestry under whose supervision he was working and enquired about the revised pay due to him in terms of 6th Pay Commission recommendations. Venkatesan is said to have directed PW2 to meet the appellant. On 01.10.2009, PW2 cellphonically contacted the appellant to the latter's cell phone No.9840702892. On the same day (01.10.2009), PW2 preferred a



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complaint to the Deputy Superintendent of Police, V&AC, who forwarded the complaint to PW8, the Inspector of Police, V&AC and on the same day, PW8 registered Ex.P13, FIR at 6.30 p.m.

- PW8 is the TLO and he began organising for a trap. On 02.10.2009, after completing the pre-trap procedures, the trap-team proceeded to the office of the appellant at around 12.00 noon on the Gandhi Jayanthi day on 2009. The money of Rs.500 x 5 = Rs.2,500/-, all smeared with phenolphthalene powder was tendered to the appellant and he received it. No sooner PW8 was alerted by PW2 and he descended on the scene along with shadow witnesses and completed the rest of the procedures.
- Further investigation was conducted by PW9 and he laid the final report.
- Necessary charges were framed by the trial court and it proceeded to try the same. During trial, the prosecution examined PW1 to PW10, produced Ext.P1 to P17 and MO1 to MO6. Of the witnesses examined, PW2 is the complainant, PW3 and PW10 are the shadow witnesses. Of all these three critical witnesses, PW2 turned hostile. The court, however proceeded to rely on the testimony of PW3 and PW10 and held that the appellant is guilty of the offences with which he was charged and convicted him as below.



<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	U/s.7 of P.C. Act, 1988	R.I. for 1 year and a fine of Rs.1,000/- in default to undergo S.I. for 3 months.
	U/s.13(2) r/w 13(1)(d) of P.C. Act, 1988	R.I. for 2 years and a fine of Rs.1,000/- in default S.I. for 3 months.

This judgment is under challenge now.

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

- That it was Gandhi Jayanthi day the day on which the trap was said to have happened and that itself belies the theory of prosecution.
- The only person who knew what happened other than the appellant was PW2. According to the prosecution, on 01.10.2009, PW2 made a cellphonic call to the appellant to the latter's number. Indeed the prosecution has produced Ext.P11, the call log and proved it through PW5 the official of the service provider. But it neither could establish the alleged number was one that relates to the appellant nor did it produce the text of the conversation said to have taken place between PW2 and the appellant. And even if it is assumed that the said cellphone number belonged to the appellant, there is nothing principally wrong in sanitary workers talking to the sanitary inspector. Therefore, the only demand as



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alleged to have been made by the appellant is not established by the prosecution.

- Regarding payment and acceptance of bribe money is concerned, PW2 in his testimony states that he has tendered money to the appellant for it to be routed to Venkatesan, maistry. The prosecution did not examine the said Venkatesan. Indeed Venkatesan did have a role in the scheme of prosecution case as he was the first person whom PW2 had contacted as regards the revised payment of salary, based on 6th Pay Commission recommendation soon after he joined duty after his medical leave. Non-examination of Venkatesan under these circumstances is adverse and an adverse inference can be drawn for not examining him.

4. The learned Government Advocate (Crl. Side) submitted that PW2 admittedly has turned hostile but not the shadow witnesses. PW3 in particular did accompany PW2 and he did not share the version of PW2. After all why should the prosecution show an extraordinary anxiety to book the appellant in a criminal case unless there is some truth about what PW2 originally contended. The law is settled that even if a critical witness turned hostile, nothing precludes the court from evaluating the other evidence available on record and to arrive at its own conclusion. If the testimony of PW3 and PW10 indicates that the bribe amount



has been paid and accepted, then it necessarily has to be inferred that there was a demand for money. It might be that the date on which the trap was conducted was Gandhi Jayanthi, a public holiday, but then so far as the sanitary workers are concerned no day is counted as holiday and their responsibility is 24 x 7.

5. Rival contentions are carefully weighed for their respective merits.

6. In order that this court may confirm the guilt of the appellant, it needs to satisfy itself that the prosecution had established the triple criteria required to prove the charge under Section 7 of the PC Act. Here, in this case, the demand for bribe money was said to have been made in a cellphonic conversation but in the absence of proof that the concerned cellphone number actually belonged to the accused and the text of the alleged conversation took place between de-facto complainant and the accused, this court cannot jump to the conclusion that there indeed was a demand for bribe money. Having stated thus, there is merit in the submissions of the learned public prosecutor as well. His theory is simple and uncomplicated. If bribe money was paid and received, then the demand has to be inferred, since hardly there will be any direct evidence regarding demand for bribe money. However, in the present case, the demand was not made orally and in absolute secrecy. The prosecution case is that the demand for bribe money was



made in the cellphone conversation said to have taken place on 01.10.2009. This implies that it might not have been difficult for the investigation agency to secure the text of the said conversation between PW2 and the appellant and to prove the same in the manner known to law. Inasmuch as this possibility in establishing the demand was ignored or neglected by the prosecution, necessarily this court has to hold that the demand for bribe money is not adequately proved. This conclusion is further fortified by the fact that PW2 in his testimony has stated that he tendered what the prosecution alleges as bribe money to the appellant only to be paid over to Venkatesan, it becomes clear that the demand for bribe money as required to be proved under Section 7 of PC Act is not established.

7. It might be true that PW3 and PW10, the shadow witnesses have spoken the language that might enthruse the prosecution, but the payment for bribe money is wobbling. The purpose for payment which PW2 claims becomes suspect, it is nigh difficult to pin down the appellant to the charges framed against him. It may be that the statutory presumption under Section 20 of the PC Act may aid the prosecution but then to invoke the presumption, the prosecution still may have to prove the minimum basic facts. If the defence could create a dent in the prosecution's attempt to establish the basic facts, then it would be sufficient to hold that the presumption under Section 20 is rebutted.



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8. After weighing the rival contentions, evidence on record and the material facts, this court comes to the conclusion that the prosecution has not proved the guilt of the accused. Accordingly, this appeal is allowed and the judgment of the learned Special Judge dated 14.11.2017 passed in C.C. No.125 of 2011 is set aside. The bail bond executed by the appellant shall stand cancelled. If the presence of the appellant is not required in any other case, he may be set at liberty forthwith.

14.10.2024

Asr

Index : Yes / No

Neutral Citation : Yes/No

To

1. The Special court for cases under Prevention of Corruption Act at Chennai 2.
2. The Public Prosecutor, High Court, Madras

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