WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.794 of 2017

M.Sundarraman ... Appellant

Vs.

The Inspector of Police
Vigilance and Anti-Corruption,
Chennai City – IV,
Chennai,
(Crime No.7/AC/2009/CC-III) ... Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) Cr.P.C., to admit the appeal and call for the entire records in connection with Special Case No.16 of 2011 on the file of the Special Judge(Chief Judicial Magistrate), Tiruvallur and set aside the conviction and sentence imposed by the Special Judge and Chief Judicial Magistrate, Tiruvallur dated 05.12.2017 in Special Case No.16 of 2011.

For Petitioner : Mr.V.Parthiban

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

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

Challenging the conviction and sentence imposed on him by the learned Special Judge (Chief Judicial Magistrate), Tiruvallur for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act in Special Case No.16 of 2011, the accused before the trial Court has now approached this Court in the present appeal.

2 The quintessence of the prosecution case is that the appellant herein as the Secretary of the Ponneri Taluk Co-operative Housing Society demanded bribe from P.W.2 for releasing the title documents which were offered as security for satisfying a housing loan, and that on 19.06.2009, it was tendered by P.W.2 and it was accepted by the appellant. The material facts constituting the prosecution case runs as below:

a) P.W.5 had obtained a housing loan, for securing which, she had deposited her title documents. On 09.09.2008 her loan account was closed. However, she was not given the title documents.

b) Set in the circumstance as stated above, on 10.06.2009, P.W.2, the daughter of P.W.5 approached the appellant at his office and demanded the

https://www.mhc.tn.gov.in/judis

WEB COPY

return of title documents. According to P.W.2, the appellant had made a demand for Rs.14,000/- as bribe for returning the title documents to P.W.5. This according to the prosecution is the first demand.

c) On 15.06.2009 P.W.2 again met the appellant and the appellant was alleged to have reiterated the same position and had required P.W.2 to come with Rs.4,000/- on 19.06.2009 and to pay the balance on 22.06.2009.

d) Unwilling to pay the bribe, on 19.06.2009, P.W.2 preferred Ex.P.2 complaint to the respondent, receiving which P.W.13, the Inspector of Police registered Ex.P.8 F.I.R at about 9.00 a.m.

e) P.W.13 soon began his pre-trap proceedings and concluded the same and reached the office of the appellant at 13.15 hours. P.W.3 and one Noyal Prakash were to be the shadow witnesses for the trap.

f) On arrival at the office of the appellant, P.W.2 met the appellant along with P.W.3 who took position from an observable distance. P.W.2 would tender Rs.4,000/- [(Rs.500 x 1) + (Rs.100 x 35] all smeared with phenolphthalein powder, and the appellant had received it. No sooner the act was completed, P.W.13 was alerted and he descended on the scene, conducted the trap-test, and it was successful. He arrested the appellant, and seized

https://www.mhc.tn.gov.in/judis

WEB COPY

the money under Ext.P4 seizure magazar, and concluded the post trap proceedings.

g) P.W.14, the Investigating Officer took over the investigation and recorded the statements and completed the remainder part of the investigation and laid the final report under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

3.1. The trial Court framed necessary charges against the accused and proceeded to try those charges. During trial, the prosecution had examined P.W.1 to P.W.14, marked Ex.P.1 to Ex.P31 and produced M.O.1 to M.O.3. For the defence, the appellant examined D.W.1 and D.W.2 and also examined himself as D.W.3, and marked Ex.D1 to Ex.D4.

3.2. One of the defences taken by the accused was that inasmuch as he was only the Secretary of the Co-operative Housing Society, which is not funded by the Government, he is not a public servant to fall within the net of Prevention of Corruption Act. This plea was rejected and the trial Court proceeded to hold that the appellant was guilty of the charges framed against him and sentenced him as

https://www.mhc.tn.gov.in/judis

WEB COPY

below :

Offence	Sentence imposed
U/s.7 of the Prevention of Corruption Act, 1988.	Rigorous Imprisonment for nine (9) months and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months.
U/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	Rigorous Imprisonment for one (1) year and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three (3) months.

The sentence imposed for both the offences to run concurrently. This judgment is now under challenge.

4.1. Alleging that the prosecution line of the case has been far too selective, the learned counsel for the appellant made the following submissions:

a) It is true that P.W.5 had obtained a housing loan from the Co-operative Society, of which the appellant was the secretary at the relevant time. What however, had not been not revealed was that P.W.5 defaulted in repaying her debt-dues, as a result of which her property was notified for sale through public auction. It is in this circumstances, P.W.5 met the appellant. The appellant, out of sympathy for P.W.5, made arrangements with one Anandan, someone he knew, for a loan for P.W.5, in order the loan dues of

https://www.mhc.tn.gov.in/judis

WEB COPY

P.W.5 to the Co-operative bank could be paid and avoid the property of P.W.5 from going under the hammer.

b) The aforesaid Anandan took a loan from his provident fund and paid the entire loan dues of P.W.5. Accordingly on 09.09.2008 the loan account of P.W.5 in the Co-operative bank came to be closed, but the arrangement which the appellant had organised through Anandan opened a fresh loan liability for P.W.5.

c) It is in this circumstances, on 08.06.2009, P.W.2 met the appellant and informed the need to notify the Sub Registry about the closure of the loan and to remove the encumbrance disclosed in the encumbrance register. The appellant required her to pay a sum of Rs.500/- as this is the charge for the intended purpose. P.W.2 paid the said sum and on the very next day, the entry from the encumbrance register pertaining to the property in question, was removed.

d) Be that as it may, on 10.06.2009, P.W.2 met the appellant seeking return of title documents which P.W.5 have pledged. But the appellant knew only too well that P.W.5 had not repaid the loan amount to Anandan. Since the appellant had organised the loan with Anandan for the benefit of P.W.5,

WEB COPY

the appellant only required that at least Rs.15,000/- was paid to Anandan, and also to execute further documents to secure the remainder part of the loan amount which P.W.5 was under an obligation to pay Anandan, in order the title deeds of P.W.5 could be released. In other words, the money demanded was not Rs.14,000/-, but it was Rs.15,000/-, and that it was not demanded as any bribe money, but only for paying to Anandan.

e) P.W.2, however, turned smart and met the appellant on 19.06.2009. The said Anandan to whom money was due from P.W.5 was also present in the office of the appellant. The money was placed on the table, and Anandan required the appellant to take the money and count it then to pay to him. However, even as the appellant was counting the money, the trap team descended on the scene and arrested him. While P.W.13 promptly complied with the rest of the proceedings, did not choose it appropriate to record the statement of the accused explaining how the money reached his hand in terms of paragraph 47 of the V & AC Manual.

f) P.W.2, though she has privy to all these transactions, had very selectively suppressed the whole truth, but picked up only couple of events and gave it a colour which is lest intended by the appellant. Both

https://www.mhc.tn.gov.in/judis

WEB COPY

P.W.5 and P.W.2, however, admitted in their respective cross examination that P.W.5 had obtained a housing loan from the Co-operative Society, that P.W.5 had defaulted in repaying her loan dues, that Anandan had offered to pay loan dues and that the said arrangement was organised by the appellant. They also conceded that loan paybale to Anandan was not paid. In this regard, while P.W.2 makes a categorical admission that money due to Anandan had not been paid till at least upto 19.06.2009, P.W.5 tried to evade the question when she was confronted with it when she replied that she did not understand the question.

g) While P.W.2 was confronted as to the presence of Anandan at the time of trap she denied the same. However, very unfortunately by the time the trial of the case opened, Anandan had passed away (sometime in 2012). However, during investigation, P.W.14 had examined Anandan and recorded his statement, but he could not be examined as a witness. It is in this circumstances, the appellant had examined D.W.1, wife of Anandan on his side, and she had spoken to the facts which probablise the case of the defence. In addition, the appellant examined himself as D.W.3.

4.2. The contention of the appellant on the merit of the prosecution is, apart he

https://www.mhc.tn.gov.in/judis

WEB COPY

being the Secretary of the Co-operative Society, and since this Society doesn’t receive any funds from the Government, he could not be termed as a Public Servant. Therefore, the benefit of Prevention of Corruption Act cannot be made applicable to him. Ext.D.1 and Ext.D2 established the same.

5. The trap is completed, the money was given and received, but whether there was a demand for bribe money and whether Rs.4,000/- was paid by P.W.2 on 19.06.2009 at the appointed hour as a bribe money and whether mere receipt of money positively that ought to have demanded for bribe money, will have to be considered. Since money was paid and received and the test proved negative, the prosecution was in a hurry to press the statutory presumption under Section 20 of Prevention of Corruption Act.

6. Per contra, Dr.C.E.Pratap, the learned Government Advocate (Crl. Side) submitted that when once the trap test was proved positive, payment and receipt of money gets automatically established, and instantly, the presumption under Sec.20 of the PC Act comes into play. Secondly, any demand for money will be made in secrecy and when the presumption under Sec.20 of the PCA is not

https://www.mhc.tn.gov.in/judis

WEB COPY

rebutted then necessarily the appellant cannot be relieved of the criminal liability.

7. The merit of the prosecutor's statement on demand for bribe money, cannot be entirely ignored. After all, with or without a statutory presumption such as one under Section 20 of the Prevention of Corruption Act, the defence is still under an obligation to create a dent in the prosecution case by raising a probability for the version it offers. The statutory presumption makes the job additionally tough for the defence, but inasmuch as Section 20 of the Prevention of Corruption Act creates only a rebuttable presumption, the defence is only need to establish so much of facts as might be necessary to probablise its version, which when done, is sufficient to doubt the prosecution case. Here, in the opinion of this Court, the appellant has shown few points over the prosecution and they are listed :

a) It is not in dispute that P.W.5 had obtained a housing loan from the Co-operative Society and she could not repay, and that it was eventually paid by certain Anandan on behalf of P.W.5, and that Anandan was introduced by the appellant, and that neither P.W.5 nor P.W.2 had repaid the loan to Anandan.

b) D.W.1's version vindicates the stands of the appellant further, for but for this arrangement with Anandan, P.W.5, ran the risk of losing her property

https://www.mhc.tn.gov.in/judis

WEB COPY

in the public auction.

8. This is the backdrop in which the allegation of P.W.5 needs to be appreciated:

- The fact remains that till 19.06.2009, neither P.W.5 nor P.W.2 had repaid Anandan the money he had advanced, closed the loan account of P.W.5. Inasmuch as the appellant had organised the loan from Anandan, very obviously he had assumed a moral responsibility to ensure that Anandan was paid. Here, P.W2 had deliberately suppressed the back ground facts in the complaint and tried to project but only alleged that the appellant had demanded bribe money. But given the fact that the appellant had organised this loan amount, greater probability is that he was justly be paid and she has to ensure that Anandan was paid the money as a pre-condition for release of the title document. After all, if the title documents are released, then it would be an embarrassing situation for him, since Anandan would be without any security to proceed against P.W.5 for realising the loan amount.

9. This Court has little hesitation to believe that given the scenario, the appellant

https://www.mhc.tn.gov.in/judis

WEB COPY

could create an impression in the Court that Rs.14,000/- that he was alleged to have demanded, was for paying Anandan and not as the bribe money. This Court firmly believes P.W.2 has manipulated the legal process of the Court that she herself now appears as defaulter in law. She does not appear to be a fair litigant either. So this Court holds that the facts as proved by the appellant, are adequate enough to rebut the presumption under Section 20 of the Prevention of Corruption Act.

10. To conclude, this appeal stands allowed. The conviction and sentence imposed on the appellant in Special Case No.16 of 2011 on the file of the Special Court (Chief Judicial Magistrate), Tiruvallur is set aside. Fine amount if any had been paid, is directed to be refunded to the appellant.

10.09.2024

ms
Index : Yes / No
Neutral Citation

To

1.The Special Judge cum
Chief Judicial Magistrate
Tiruvallur.

https://www.mhc.tn.gov.in/judis

WEB COPY

2.The Inspector of Police
Vigilance and Anti-Corruption,
Chennai City – IV,
Chennai.

3.The Public Prosecutor
High Court, Madras.

WEB COPY

N.SESHASAYEE, J

ms

Crl.A.No.794 of 2017

10.09.2024