



WEB COPY



CRLA.No.616 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2024

CORAM : MR.JUSTICE N.SESHASAYEE

Crl.A.No.616 of 2018

V.Subramani

... Appellant

Vs.

The State by Inspector of Police
Vigilance & Anti Corruption Wing
Vellore
Crime No.14/2010
Vellore District

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed in judgment dated 05.10.2018 made in Special Case No.2 of 2012 on the file of the learned Special Judge / Chief Judicial Magistrate, Vellore, by allowing this Criminal Appeal.

For Petitioner : Mr.V.Raghavachari
Senior Counsel

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



CRLA.No.616 of 2018

WEB COPY

JUDGMENT

This appeal is directed against the conviction and the sentence imposed pursuant to the judgment by the learned Special Judge / Chief Judicial Magistrate, Vellore in Special Case No.2 of 2012, for offences U/s.7 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. For both the charges the trial Court imposed a sentence of four (4) years Simple Imprisonment each and a fine of Rs.2,500/- each and in default to undergo three (3) months Simple Imprisonment. Both the sentences were directed to run concurrently.

2.The case of the prosecution runs as below:

- a) In November 2010, the appellant herein was working as a Village Administrative Officer in Uliampakkam Village, in Arakonam Taluk, Vellore District. He was also in full additional charge of Keelandur Village.
- b) While so, on 11.11.2010, certain Gurunatha Reddiar wanted to obtain a copy of the Adangal for a certain property which his son Manikandan owned. The Village Administrative Officer



WEB COPY



CRLA.No.616 of 2018

demanded Rs.1,000/- as bribe to do his job. This according to the prosecution was the first demand for bribe. On 23.11.2010, Gurunatha Reddiar met the appellant yet again, and the appellant was stated to be steadfast on his demand. This was the second demand for bribe according to prosecution.

- c) Unwilling to pay the bribe money, Gurunatha Reddiar preferred Ex.13 (complaint) to the respondent, receiving which P.W.9 registered Ex.P14 (F.I.R.). P.W.9 is also a Trap Laying Officer and he commenced the pre-trap procedure with no loss of time.
- d) Around 9.45 a.m. on the same date (23.11.2010), P.W.9 led his trap team which comprises of Gurunatha Reddiar and two independent witnesses viz. P.W.2 and P.W.3 to the office of the appellant. As planned, Gurunatha Reddiar accompanied by P.W.2, entered the office of the appellant and after certain discussion on what is required and what is to be done officially, the appellant had demanded the bribe money. Gurunatha Reddiar would now tender 1 x Rs.500 and 5 x Rs.100 notes, all smeared with Phenolphthalein powder. Appellant received the



WEB COPY



CRLA.No.616 of 2018

same and kept it in his shirt pocket. Gurunatha Reddiar would now signal P.W.9 and he descended on the scene to complete the rest of the procedures. The trap was successful. P.W.9 had *inter alia* prepared Ex.P10 (seizure Mahazar).

3. The investigation was then taken over by P.W.10, who would now complete the remainder part of the investigation and lay his final report.

3.2 The trial Court framed necessary charges and proceeded to try the same. When the trial opened, Gurunatha Reddiar had already passed away. The prosecution therefore examined both the independent witnesses to the event as P.W.2 and P.W.3. In all, it examined 10 witnesses and produced Ex.P1 to Ex.P15 and marked M.O.1 to M.O.5. For the defence, the appellant examined one independent witness as D.W.1. After appreciating the evidence before it, and relying entirely on the testimonies of P.W.2 and P.W.3, the trial Court found the appellant guilty of the offence he was charged with and slapped the punishment as outlined in the opening paragraph of this judgment. This judgment of the trial Court is now under challenge.



CRLA.No.616 of 2018

WEB COPY

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

- a) The fulcrum of the prosecution case is that the appellant demanded bribe for issuing computerised patta (Ex.P4), ownership certificate (Ex.P5) and a copy of the FMB (Ex.P6), for obtaining which Gurunatha Reddiar had approached the appellant on 11.11.2010, and it was on that date the appellant was said to have made his first demand for bribe. But, Ex.P4, Ex.P5 and Ex.P6 were seemed to be issued by the appellant on 11.11.2010. There is no case for the prosecution that the bribe was demanded for doing something beyond issuing Ex.P4 to Ex.P6. This would imply there was hardly any need for the complainant to pay Rs.1,000/- as bribe on 11.11.2010.
- b) So far as proof of the second demand for bribe on 23.11.2010 is concerned, it is perfectly within the personal knowledge of Gurunatha Reddiar and since he died, this fact is not established.
- c) Turning to trap, the prosecution relies exclusively on the



WEB COPY



CRLA.No.616 of 2018

testimonies of P.W.2 and P.W.3. P.W.2 states that the appellant demanded the money and Gurunatha Reddiar paid the money planted for the event. However, P.W.3 contradicts P.W.2 materially when he says at the time when he along with P.W.9, the Deputy Superintendent of Police landed at the desk of the appellant, the money was on the table and the Village Administrative Officer picked up that money only on the instruction of the P.W.9. If P.W.2's statement is scanned acoustically, it does not reveal that the appellant had received the money. At any rate, the testimony of P.W.3 only fortifies this supposition, since when he entered the money was right on the table. An offence U/s.7 of Prevention of Corruption Act, 1988, is complete only when the prosecution could establish the triple criteria for creating the presumption U/s.20 of the Prevention of Corruption Act, 1988, viz. demand for bribe, payment of bribe money and its acceptance. When money is not established to have been received by the appellant, then it can be presumed that there never was a demand. At any rate, there was hardly any need for him to demand or receive bribe



WEB COPY



CRLA.No.616 of 2018

on 23.11.2010, when the job he needed to perform had already been performed some twelve days before, on 11.11.2010.

d) P.W.3 admits that at the time when the trap was laid, there were some twenty - thirty persons in and around the office. But, P.W.9 had not chosen to record any of the statements of any of the witnesses.

e) The statements of the witnesses U/s.161 Cr.P.C. were recorded, if not manufactured more than a month later and they were also not seemed to have been despatched to the Court in time.

5.Summing up his arguments, the learned Senior Counsel submitted that when the prosecution case as was attempted to be established, does not even create a probability of an offence within the frame work of Section 7 of the Prevention of Corruption Act, 1988, necessarily presumption U/s.20 of the Prevention of Corruption Act, 1988, cannot be pressed into service. At any rate, the appellant is entitled to the benefit of doubt, but the trial Court went wrong in placing reliance on testimonies of P.W.2 and P.W.3 without advertng to the inconsistencies and the internal contradictions the testimonies hold.



CRLA.No.616 of 2018

WEB COPY

6.Per contra, the learned Government Advocate (Crl. Side) submitted that during the Phenolphthalein test, P.W.9 also subjected the shirt of the appellant and the left shirt pocket turned pink. The shirt was seized under M.O.5 and was seized under Ex.P10 (Seizure Mahazar) and was forwarded to forensic laboratory, where P.W.8, vide her report in Ex.P12, lends corroboration to the prosecution version. Now, unless the money is kept in the pocket, pocket need not have gone pink. What the witness did not speak, the material object can speak. Therefore, the minor inconsistencies in the evidence of P.W.3 should have to be co-related with M.O.5.

7.In response, the learned counsel for the appellant submitted that nowhere no witness ever speaks to the fact that the appellant had received the bribe money from Gurunatha Reddiar and kept it in the shirt pocket. Unless this missing statement is established by evidence, merely because the test proved to be positive when M.O.5 was subjected to it cannot be a conclusive evidence to establish the guilt of the appellant. In other words, each piece of evidence must support each other, but in the



CRLA.No.616 of 2018

WEB COPY

instant case every piece of evidence which the prosecution relies on are essentially stand alone evidence and they hardly provide mutual internal support.

8.Rival submissions are appreciated. There are two parts to the whole submissions:

- a) Whether the prosecution, on fact could establish the minimum facts required to press into service the presumption U/s.20 of the Prevention of Corruption Act, 1988? and
- b) the quality of investigation.

9.Turning to the first part, this Court finds that the effort of the prosecution seems scattered all over. It may be its misfortune that Gurunatha Reddiar, the defacto complainant was dead, but then its efforts to establish the crime through P.W.2 and P.W.3 hardly advance its cause, since they speak in different frequencies. It is submitted by the learned counsel for the appellant, P.W.2, who atleast partially supports the case of the prosecution, does not state that appellant received the money and kept it in the pocket. Whereas, P.W.3 speaks the line of the



CRLA.No.616 of 2018

defence when he says the money was found on the table when he along with P.W.9 arrived inside the office of the Village Administrative Officer. It creates a serious doubt whether money at all was received or was it merely placed on the table of the Village Administrative Officer. Unless the money is proved to have been received, the Court may not be even in a position to draw an inference of a prior demand for bribe money. But the larger question is when the job which Gurunatha Reddiar required the appellant to do had already been done some twelve days before, this Court finds hardly any need for P.W.2 to voluntarily tender money some ten days after he had received the documents. Ex.P4 to Ex.P6 literally expose the prosecution case here. This Court is plainly not impressed with the prosecution's effort to place few pieces of jigsaw puzzle which hardly could be fitted in together to arrive at a conclusive picture, something which the prosecution requires this Court to believe.

10.Turning to the second part, P.W.10 should take much of the credit for his lackadaisical approach in investigating the crime. A crime U/s.7 of Prevention of Corruption Act, 1988, should settle by itself by applying the Rule of *res ipsa loquitur*. But the prosecution appeared to have



CRLA.No.616 of 2018

WEB COPY

squandered the opportunity when it has recorded the statements of P.W.2 and P.W.3 more than a month after the trap, to be precise on 31.01.2011.

Worse these statements were not promptly despatched to the Court, but appear to have accompanied the final report and delivered to the Court only on 29.05.2012. A flaw in investigation, which though may not be fatal to the prosecution case is the failure of P.W.9 to record the statement of the accused in terms of paragraph No.47 of the V& AC Manual. It may be that a failure to record the statement contemporaneously when the trap proved successful might not be a ground to acquit the accused, but that is the best opportunity for any Trap Laying Officer to get the first and immediate version of the accused when he was least prepared for the trap. This Court repeatedly finds that most investigating officers have considered it a luxury to ignore the need to record the statements of the accused in terms of paragraph No.47 of V& AC Manual. The Director of Vigilance, now holds a key to ensure that his officers fall in line with what is required to be done in terms of the Manual.



CRLA.No.616 of 2018

WEB COPY

11. The conclusion is to state the obvious. This appeal is allowed. The conviction and sentence imposed on the appellant in Spl.Case No.2 of 2012 on the file of the learned Special Judge / Chief Judicial Magistrate, Vellore is hereby set aside, and fine amount, if any paid by the appellant is directed to be refunded.

25.09.2024

kas

Index : yes / no
Neutral Citation

To

1.The Special Judge /
Chief Judicial Magistrate
Vellore,

2.The Inspector of Police
Vigilance & Anti Corruption Wing
Vellore
Crime No.14/2010
Vellore District

3.The Director of Vigilance
Vigilance & Anti Corruption



WEB COPY



CRLA.No.616 of 2018

N.SESHASAYEE, J.

kas

CrI.A.No.616 of 2018

25.09.2024