



CrL.A.No.712 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2024

Pronounced on : 19.10.2024

CORAM : JUSTICE N.SESHASAYEE

CrL.A.No.712 of 2018

R.Rajasekaran

.... Appellants / Single Accused

Vs

State by the Inspector of Police
Vigilance and Anti Corruption
Vellore, Vellore District
(Crime No.5/2004)

.... Respondent / Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for the entire records in connection with Spl.Case No.5/2005 on the file of the learned Special Judge and Chief Judicial Magistrate, Vellore, Vellore District, and set aside the judgment dated 01.11.2018.

For Appellant : Mr.V.Parthiban
for Mr.E.Kannadasan

For Respondent : Dr.C.E.Pratap
Govt Advocate [Criminal Side]



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JUDGMENT

This appeal is preferred by the sole accused/appellant challenging the conviction and sentence imposed on him by the learned Special and Chief Judicial Magistrate, Vellore, Vellore District in Spl.Case No.5 of 2005 for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution case runs as below:

- a) The appellant was a Village Administrative Officer. On 13.02.2004, P.W.2, the defacto complainant approached the appellant for transfer of patta vis-a-vis the property that he had purchased. The appellant is said to have made a demand for Rs.3,000/-.
- b) Not willing to pay the bribe money, on 16.02.2004, P.W.2 approached the respondent-police with his Ext.P14 complaint, receiving which, P.W.14 registered Ext.P10 FIR.
- c) On the following day (17.02.2004), early in the morning, P.W.14, the Trap Laying Officer commenced his pre-trap procedures, and at around 10.10 a.m., he landed in the office of the the appellant with his trap



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team which included P.W.3 and one Balaraman, both of whom are the official witnesses for the event.

- d) P.W.2 along with P.W.3 met the VAO and paid the amount, which he had accepted. Wasting no time P.W.4 signalled and alerted P.W.14 and he and his team arrived at the scene and completed the remainder part of the proceedings. The trap was successful.
- e) The investigation was then taken over by P.W.15, who recorded the statements of witnesses, organised a chemical analysis of the material objects seized by the forensic experts, received the report from forensic experts, and laid the final report for offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Charges were duly framed against the appellant, and the prosecution examined P.W.1 to P.W.15, and marked Ext.P1 to Ext.P14 and M.O.1 to M.O.7. For the defence, the appellant had examined D.W.1 and D.W.2. It appears from the judgment of the trial Court that the appellant had taken a defence founded on non-compliance of Para 47 of V&AC Manual, but the trial Court had overturned it. Ultimately, the trial Court convicted the appellant for both the charges and also imposed the sentences which are denoted as below:



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Case No.	Offences	Sentences
Spl.C.C.No.5 of 2005	Section 7 of Prevention of Corruption Act	Four years rigorous imprisonment with a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for three months
	Section 13(2) r/w.Sec.13(1)(d) of Prevention of Corruption Act	Four years rigorous imprisonment with a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for three months

The sentences are directed to run concurrently. This is now under challenge.

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

- a) PW2, the defacto complainant makes two alternate statements vis-a-vis the date on which demand for bribe money was made. In Ex.P14, complaint, he would allege that bribe money was demanded on 13.02.2004, but in his cross-examination he would state that only on 16.02.2004 he had first met the appellant. When demand for bribe money is *sine qua non* for fastening criminal liability on the appellant U/s.7 of the Prevention of Corruption Act, 1988, then it is imperative that the prosecution comes clean in establishing that the bribe money indeed was demanded on 13.02.2004.
- b) Contrary to the claim of PW2, the appellant claims that PW2 had met him some 15 days earlier, to be precise on 21.01.2004, on which date PW2 insisted for mutation of revenue records in his name on the strength of a sale



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agreement, and when appellant stated that it could not be done since the document was only a sale agreement, PW2 created a ruckus in his office. He, therefore, preferred Ext.D1, complaint dated 21.01.2004 to the Tahsildar, who in turn had preferred a complaint to the local police vide Ex.D2, dated 21.01.2004. This implies that PW2 had entertained some grudge against the appellant and this angle of the defence has not been adequately appreciated by the trial Judge.

c) The appellant, as a V.A.O. does not have the authority to order transfer of patta, as the same is required to be performed only by the Tahsildar.

5. Per contra, the learned Government Advocate (Cr. Side) submitted as below:

a) It is not a case where appellant was tried for possessing assets disproportionate to his known source of income, but for receiving bribe when he was literally caught red handed by the trap laying officer. A demand for bribe can hardly be proved by direct evidence, and it has to be gathered from the next two limbs, which are required to be established by the prosecution for establishing the offence U/s.7 of the Prevention of Corruption Act, 1988. The appellant has not explained why he received and accepted a bribe money which was paid by the



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PW2. If payment and acceptance are there then demand should always be presumed.

b) So far as the alleged inconsistency in the date of demand as contended by the appellant is concerned, PW2 was cross examined some seven years after his chief examination on 12.02.2010, and the offence itself had taken place some twelve years prior to the date of his cross examination. Necessarily, some lapses in memory could have intervened.

c) An offence U/s.7 of Prevention of Corruption Act, 1988, does not rest on the fact whether the V.A.O. has the authority to pass proceedings for transfer of patta, but whether he has received bribe.

d) The line of defence adopted by the appellant now before this Court hardly are adequate to rebut the presumption U/s.20 of the Prevention of Corruption Act, 1988.

Discussion and Decision :

6. Rival submissions are carefully evaluated. The case of the prosecution commences almost innocently. P.W.2, defacto complainant had made Ext.P3 application to P.W.10, Tahsildar for transfer of patta for certain property, that in



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connection therewith on 13.02.2004, he had met the appellant who is only a Village Administrative Officer, and on that date, the appellant had made a demand for Rs.3,000/-. And that was the only demand, which eventually led to the filing of Ext.P10, FIR on 16.02.2004. This was followed by trapping the appellant on 17.02.2004. If the manner in which the prosecution presents the evidence on trap is assessed, then it prima facie establishes atleast two of the foundational facts necessary to constitute an offence under Section 7 of P.C. Act, namely the payment of the bribe money and acceptance of the bribe money. Could there be a demand for the bribe money? This is the third of the foundational fact required for constituting the said offence. After all, when payment of bribe money and its acceptance are established, necessarily it invites the application of statutory presumption under Section 20 of P.C. Act. The appellant's effort to rebut the said presumption is founded on the following facts:

- a) That earlier to 13.02.2004, on 21.01.2004, P.W.2 had met the appellant at his office and that P.W.2 is said to have threatened the appellant which forced him to prefer Ext.D1 complaint against P.W.2, acting on which P.W.10, Tahsildar had addressed a communication / complaint (Ext.D2) to the Inspector of Police on the same date, enclosing Ext.D1. According to the appellant, the terms were not cordial as between



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P.W.2 and himself, and hence, P.W.2 had every motive to fix him in this case.

- b) The other fact is that at the time when P.W.2 entered the room of the appellant on 17.02.2004 to tender the bribe money, there was a small crowd who had gathered there to collect the free dhoties and sarees which the Government distributes as part of its Welfare Scheme for Pongal '2004. So far as this fact is concerned, P.W.2 admits in his cross-examination that there was a crowd of around 100 people at the office of the appellant, and in particular, at the time when he was at the very room where the appellant was, there were four or five persons. When the same fact was confronted to P.W.3, the shadow witness, he had deposed that there were none.
- c) The line of defence of the appellant was that P.W.2 placed the money on the table, and P.W.14 forced the appellant to keep it in his pocket and it is how the trap was force-conducted. To speak to this fact, the appellant had examined D.W.1 and D.W.2, both the villagers claim that they were present at the time when P.W.14 conducted the trap.



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7. While the facts as presented by the prosecution, invite an application of presumption under Section 20 of P.C. Act, yet the appellant only needs to establish so much facts as might render his defence probable. This would be the approach on the basis of which this Court would weigh the plausibility or probability of the appellant's case. To this, it must be added the rule of thumb in assessing such probability of the defence case is an ordinary course of human conduct of a reasonable man of law, if he was placed in such circumstances.

8. When P.W.2 was confronted in his cross-examination if he had been to the office of the appellant on 21.01.2004 and had met him, he merely states that he did not remember. It has to be underscored that he had not chosen to deny it. This has to be now appreciated in conjunction with Ext.D1 and Ext.D2. As earlier indicated, on 21.01.2004, P.W.2 had created a ruckus in the office of the Village Administrative Officer, which had forced the latter to prefer Ext.D1 complaint to the Tahsildar, on the basis of which P.W.10 had preferred a complaint to the police (Ext.D2). P.W.10 admits to this fact in his evidence. When the same was confronted to the Investigating Officer, in his cross-examination, he would state that he did not probe into this angle as he felt it was



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not necessary.

9. It is in these circumstances, P.W.2 claims that he had met the appellant on 13.02.2004. Very apparently on that date, the terms between them was not cordial and it is also equally apparent that P.W.2 was keen to suppress his meeting with the appellant as well as how he had behaved in the office of the appellant on 21.01.2004. It has also come out in evidence that Ext.P3 complaint for tranfer of patta, in relation to which the appellant was alleged to have demanded the bribe, was to be made only to P.W.10. Therefore, at one level, P.W.2 had met the appellant in connection with transfer of patta when the latter did not have authority to pass any proceedings concerning patta, and has also invited a complaint from P.W.10 to the police, through his conduct in the office of the appellant on 21.01.2004. Is it now believable that the appellant would have invited P.W.2 with all the warmth on 13.02.2004 and would have demanded Rs.3,000/- as bribe for doing a job for which he has no authority to do? Therefore, the demand for bribe money as projected by the prosecution is unbelievable.

10. But there had been a trap on 17.02.2004, and the prosecution claims that the



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money indeed had been recovered from the shirt pocket of the appellant. The shirt of the appellant was seized and produced as M.O.7, and it has also passed the test. When P.W.2 meeting the appellant on 13.02.2004 is unbelievable, then it is equally difficult to presume that when P.W.2 entered the chambers of the appellant on 17.02.2004 with the bribe money, he would have reacted with courtesy. Admittedly there were about 100 and odd people gathered at the office of the appellant as well as four or five people were inside the room of the appellant at that time, which P.W.2 himself admits and this fact becomes very critical. If only the trap was fair, none prevented P.W.14 to have any one of those independent witness to attest Ext.P4 seizure mahazar or P.W.14 could have cited anyone who had gathered there as witness. He did not do so. But D.W.1 and D.W.2 claim that they were there in the crowd and they had seen P.W.14 literally threatening the appellant to take the money placed by P.W.2 on the table. Except a suggestion that D.W.1 and D.W.2 are falsely testifying for the appellant, the prosecution has not discredited the version. And if this Court were to take a comprehensive view of the entire evidence for ascertaining the believability of the case as presented by P.W.2, then there is every reason why this Court should not ignore the testimony of D.W.1 and D.W.2.



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11. The facts as proved indicate that while the prosecution has not established the demand for bribe money, its attempt to prove the demand, tender and acceptance of bribe money is suspect. Necessarily, this Court holds that the case as presented by the appellant is adequate enough to create a dent in the presumption under Section 20 of the P.C. Act. The benefit of doubt will now truly go in favour of the appellant.

12. In conclusion, this appeal is allowed and the order and judgment of the learned Special Judge and Chief Judicial Magistrate, Vellore, Vellore District, dated 01.11.2018 in Special Case No.5/2005 is set aside.

19.10.2024

Index : Yes / No

Neutral Citation : Yes / No
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To:

- 1.The Special Judge and
Chief Judicial Magistrate
Vellore, Vellore District.
- 2.The Inspector of Police
Vigilance and Anti Corruption



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Vellore, Vellore District.
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3.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery Judgment in
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