IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.07.2024
Delivered on	06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.A.No.732 of 2018
& Crl.M.P.No.15572 of 2018

N.Selvaraj ... Appellant

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Cuddalore. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 to set aside the conviction and sentence imposed on the appellant in Special Case No.14 of 2010 on the file of the learned Chief Judicial Magistrate/Special Judge, Cuddalore.

For Appellant : Mr.V.Krishnamoorthy

For Respondent : Mr. S.Santhosh, GA

J U D G M E N T

The order of conviction and sentence imposed on the appellant herein by the learned Chief Judicial Magistrate, Special Court, Cuddalore in Spl.C.No.14 of 2010 dated 15.11.2018 for the commission of the offences under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act (for the sake of convenience-PC Act), is put under challenge in the present appeal.

2. The gist of the case is as follows:

a) The complainant approached the appellant herein for transfer of patta in his name, for which it is alleged that the appellant demanded a sum of Rs.2000/- as illegal gratification for performing his duty. On negotiation, the demand amount was reduced to Rs.1000/-. Since the de-facto complainant was not willing to pay the bribe amount, he approached the Inspector of Police, V & AC, Cuddalore on 11.01.2010. On receipt of the same, FIR was registered. On 11.01.2010 at about 7.10 p.m., as per the instructions of the Trap Laying Officer/TLO, the de-facto complainant along with official witness/PW2 went to the residence of the accused and gave him Rs.1000/- as demanded which was received by the accused and thereby the appellant committed the offence under Section 7 and 13(2) r/w. 13(1)(d) of PC Act. A final report was filed and the case has been taken on file in Spl.C.No.14 of 2010 by the learned Chief Judicial Magistrate/Special Judge, Cuddalore.

b) The trial Court, on considering the materials placed on record framed the charges and tried the accused. The accused denied the charges levelled against him. To prove the charges levelled against the accused, on the side of the prosecution PW1 to PW12 have been examined, Exs.P1 to P18 and M.O.1 to M.O.5 were marked and on the side of the defence, DW1 was examined and Exs.D1 to D7 were marked.

c) On completion of trial, the trial Court on analyzation of the oral and documentary evidences, found the accused guilty of the offences stated above and sentenced him to undergo 5 years S.I. and to pay a fine of Rs.10,000/- in default to undergo further one year S.I. under Section 7 of PC Act and to undergo 7 years S.I. and to pay a fine of Rs.10,000/- in default to pay a fine to undergo further one year S.I. under Section 13(2) r/w. 13(1)(d) of PC Act and ordered the sentences to run concurrently.

3. Aggrieved over the same, the appellant has preferred the present appeal.

4. Heard Mr.V.Krishnamoorthy, learned counsel for the appellant and Mr.S.Santhosh, learned Government Advocate appearing on behalf of the respondent/State.

5. The learned counsel for the appellant submitted that the first charge alleged to be levelled against the appellant herein is that on 08.01.2010 at 10.30 a.m., the appellant herein/accused demanded a sum of Rs.2000/- as bribe to measure the land of the de-facto complainant/deceased (died on 11.03.2015) and to effect name transfer in the patta and subsequently on negotiation, the accused reduced the demand to Rs.1000/- and therefore, the accused is liable to be prosecuted for the offence under Section 7 of PC Act. Further, the second charge alleged is that on 11.01.2010, the accused called the de-facto complainant to his residence to give Rs.1000/- and the same was received by him. In view of the same, the accused abused his position as a public servant and therefore, he is liable to be prosecuted for an offence under Sections 13(2) r/w.13(1)(d) of PC Act.

6. Further, he submitted that the complaint was given on 08.01.2010 by the de-facto complainant/deceased, who had visited the office of the accused and submitted the documents to effect name transfer in patta. But the accused herein demanded Rs.2000/- but subsequently reduced it to Rs.1000/- for performing his duty. _The complainant was not willing to give the demanded amount. It is pertinent to note that the complainant was alive till 2015 but unfortunately, he was not examined. Even though the prosecution had got six long years since the year 2010 but deliberately has not examined the de-facto complainant. The reason adduced for not examining the defacto complainant is that he was not well and if that is the case, the prosecution would have examined him even through a Court appointed Advocate Commissioner under Section 284 Cr.P.C. Hence withholding of an vital witness is fatal to the prosecution and it can draw adverse inference against the prosecution. That apart, PW2 had deposed that the de-facto complainant had informed him that he gave Rs.1000/- on 08.01.2010 iand subsequently paid Rs. 1000/- on the day of trap. But it was not reduced into writing by TLO which is against Vigilance Anti-Corruption Manual. Moreover, the

application/Ex.P1 is given only to effect name transfer in patta whereas the evidence of PW1 and PW5 revealed that the complainant has requested them to sub-divide the property and to effect name transfer in the joint patta for which they had responded that it is not possible unless he is in enjoyment of the property separately and on the said ground, the application given by the de-facto complainant was closed. Since the accused has given a report against him, the said complaint has been preferred by the de-facto complainant. The motive and enmity could not be established by the accused since the de-facto complainant was not produced before the Court. Hence, the initial demand as well as the document Ex.P14/complaint were not proved. The right of the accused to cross examine the de-facto complainant has been taken away by the prosecution since they have not produced the de-facto complainant before the trial Court. Further, the original application dated 29.09.2009 given to the official was not exhibited before the Court and only xerox copy is produced and no reasonable explanation was given for their failure to produce the said document. Thus, the document is not said to have been proved as per Section 63 of the Indian Evidence Act. In these circumstances, it is to be noted that the prosecution has not proved the initial demand made by the accused.

7. The learned counsel continuing his arguments submitted that the evidence to prove the trap available are PW2 and PW11's ocular testimonies, entrustment mahazar and seizure mahazar. In the case on hand, the evidence of PW2 is unreliable and untrustworthy. According to him, Ex.P2 and Ex.P4 entrustment and seizure mahazar were drawn between 11.30 a.m. and 12.30 p.m. and the defacto complainant with official witness had started to Virudhachalam by 1.30 p.m. and reached by 3.00 p.m., till then the de-facto complaint did not call the accused and ascertain his availability. After getting down in Virudhachalam, the complainant called the accused, who in turn made him to come by 7.00 p.m. It is highly impossible for the trap party to wait for 4 hours in Virudhachalam without even ascertaining the availability of the accused. PW2 in his chief examination has deposed that TLO has directed the complainant to meet the accused in Cuddalore Taluk office and asked him to effect name transfer in the patta whereas in his cross examination had stated that the de-facto complainant tendered money to the accused even without any demand. Further, the evidence of PW11/TLO shows that he did not record the

statement of the accused and thus violated Rule 47 of V & AC Manual. PW2 has stated that he was informed by the de-facto complainant that the accused had received Rs.1000/- on 08.01.2010 itself from the complainant and again Rs.1000/- on the day of trap i.e., on 11.01.2010. PW11 in his evidence has deposed that the seizure mahazar/Ex.P4 was prepared in the house of the accused whereas it has been stated in Ex.P4, that it was prepared in Virudhachalam Taluk Office. At this juncture, it is predominant to note that PW11 prepared two arrest memos for the arrest of one single accused. PW11 had also admitted through Ex.D3 and Ex.D4, that Rs.1000/- and application of the de-facto complainant were seized. Further, with regard to the application of the de-facto complainant, he admitted that it was not mentioned in Ex.P4 and Ex.P7/search List. Likewise, there are several other contradictions including Ex.D5 (SOC in Rough Sketch) and Ex.P6 (Observation Mahazar) about the SOC. Ex.P2 and Ex.P4 were typed in computer by Constable Babu, but he has not signed the documents. PW11 admitted that there is no mention about the cell numbers and call details in Ex.P4. The cross examination of PW11 is very important to disprove the prosecution case. The investigation of PW12 is perfunctory. He also submitted that in cross examination, he admitted that Para 53 of V & AC Manual has not been followed for transferring the case as there must be an order of the Superintendent of Police (V & AC). The alleged application of the de-facto complainant is only to effect name transfer in patta whereas the real situation is that the joint patta could not be subdivided unless the defacto complainant is in possession and enjoyment of the property separately. Hence, the accused has recorded the statement of the defacto complainant and sent the same to Tasildhar, who in turn rejected the application of the complainant and has sent the same to the record room. Therefore, the version of PW12 is improbable and illogical. The evidence of PW12 is very important for disproving the prosecution case. Further, he admitted that he did not file originals of Ex.P8, Ex.D1 and Ex.D2 and also Ex.P3 (series) in the trial Court. He has not taken any steps to bring the original file from the Tahsildar's Office.

8. On contrary, the learned Government Advocate submitted that the defacto complainant approached the accused for surveying his land for which the accused had demanded Rs.2000/- which has been reduced to Rs.1000/-. Since defacto complainant was not

willing to pay the bribe amount, he gave a complaint to the Inspector of Police, V & AC, Cuddalore on 11.01.2010 and the same was registered. He further submitted that on the instructions of the vigilance team, the defacto complainant along with official witness/ PW2 met the accused in his house and gave the tainted amount of Rs.1000/- which was received by the accused in his right hand and kept in his pocket. After complying with all the procedures, the TLO confirmed the demand and acceptance of bribe amount by the accused and hence the case.

9. The learned Government Advocate quoted the decision of the Hon'ble Supreme Court in the case of ***C.B.I. vs. Ashok Kumar Aggarwal dated 22.11.2013*** reported in ***MANU/SC/1220/2013*** wherein the Court has summarized the legal propositions which reads as follows:

> *"8.In view of the above, the legal propositions can be summarised as under:*
>
> *a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the*

material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

10. Continuing his arguments, he submitted that PW1

deposed that after perusing the requisition letter of Director, Vigilance and Anti-Corruption Wing, Chennai and file containing all the relevant records, he issued Ex.P1 order and also stated that he perused F.I.R, statement of witnesses, statement of accused, three mahazars and after satisfying himself, he issued the said order. Admittedly, PW1 did not mention the Complaint, Entrustment Mahazar, Observation Mahazar, Rough Sketch, Chemical Analysis Report, Search List, etc., in Ex.P1 Sanction Order and reference column in Ex.P1. Moreover, PW1 denied the fact that he was given draft sanction order. Merely because PW1 admitted that the accused completed his work and no official work was pending with him and his report was accepted by the Tahsildhar on 02.12.2009, it cannot be said Ex.P1 is not valid. PW1 has no duty to verify with the veracity of the statements of the witnesses and documents. He has to verify with the records that whether *prima facie* case is made out against the accused to prosecute. However, PW1 specifically deposed that after perusing the records and applying his mind, he issued sanction order/Ex.P1 and also submitted that the nature of accusation, reason for arrest, offences charged and *prima facie* case against accused alone are sufficient to grant sanction order. The sanction order/Ex.P1 was granted by PW1, after due application of mind, which has been established before the Court by producing the relevant files and by oral evidence of the author of the sanction at the time of evidence. Therefore, it is evident that PW1 had issued the order of sanction with awareness of all relevant facts/materials and had applied its mind to all the relevant material. Further, it is submitted that the sanction authority was Assistant Director of Survey and Land Records. He is not a lower rank official and he is very well competent to remove the accused. He holds the post as additional charge and those competent authority, who holds the post as an additional charge is very well competent to pass an order of dismissal and it is not prohibited in law. Hence, the ground of appeal in regard to issuance of sanction order by the competent authority, is unsustainable in the eye of law.

11. The learned Government Advocate drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Neeraj Dutta V. State (Govt. of N.C.T. Of Delhi), reported in (2023) 4 SCC 723,*** the Court has held that the presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a Court of law by way of an

inference only when the facts have been proved by relevant oral and documentary evidence and not in the absence thereof. The relevant paragraphs of the said order has been extracted below for useful reference:

> *"88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*
>
> *88.6. In the event the complainant turns hostile, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not*

abate nor does it result in an order of acquittal of the accused public servant."

12. It is also submitted by the learned Government Advocate that there is no doubt that the initial burden of proving the fundamental facts constituting the offence is upon prosecution and the prosecution had discharged its duty by proving the facts without any reasonable doubt.

13. Furthermore, he highlighted the decision of this Court in the case of ***Narayan Chetanram Chaudhary V. State of Maharashtra,*** wherein the Court has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial. It is held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. The relevant portion of of the judgment reads as under:

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness

unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

14. In yet another decision of the Hon'ble Supreme Court in the case of ***Sita Soren Vs.Union of India*** reported in ***(2024) SCC Online SC 229*** has summarized the legal propositions which is extracted hereunder for easy reference:

"158. Under Section 7 of the PC Act, the mere obtaining accepting attempting to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that

the act for which the bribe is given be actually performed. The First Explanation to the provision further strengthens such an interpretation when it expressly states that the obtaining, accepting, or attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained;"

15. It is submitted that with regard to the compliance with V & AC manual, the Hon'ble Supreme Court in the case of ***Duraimurugan V. State*** reported in ***2013 SCC OnLine Mad 30*** has held that Rules under Vigilance Manual are only administrative and there is no mandatory violation on non-observance of the same which would affect the validity of the prosecution. The relevant portion of the order reads as under:

"The scope of the Manual of DVAC came up for consideration in a decision rendered in ***K.Selvaraj V. State, 2004 Cri.L.J. 3754****. In the said case, the appellant and others were convicted for the offences under Sections 7,*

13(1)(d) r/w 13(2) of the PC Act and aggrieved by the conviction and sentence passed by the trial Court, they preferred an appeal before this Court. One of the points urged before the learned Judge was that Clause No. 41 of the Manual of DVAC, as per which a public servant whose rank is preferably higher than that of the officer to be trapped, was not followed, which has resulted in serious prejudice to the first accused. The respondent/prosecution, in response to the said submission, submitted that the rules are framed for the guidance of vigilance officials and they are only directory and the non-observance of the same would not in any way affect the trap nor vitiates the prosecution. A single Bench of this Court has considered the said submissions and relying upon the earlier decision of this Court in ***G.A. Ethiraj v. State, 2002 (1) Mad.L.W. (Cri.) 136: 2001 Cri.L.J. 4139****, wherein it has been held that Rules under Vigilance Manual are only administrative and on non-observance of the same, there is no mandatory violation, which would affect the validity of the prosecution ..”*

Thus, the learned Government Advocate submitted that the trial Court on proper appreciation had rightly convicted and sentenced the accused for the offences committed by him as stated above which warrants no interference by this Court.

16. In response to the submissions made by the learned counsel for the respondent, learned counsel for the appellant submitted that *Neeraj Dutta's case* as stated supra is no way applicable to the facts of the present case. It pertains to death of a complainant or the complainant turning hostile. In the case on hand, even though the de-facto complainant was alive for 5 years, he was not examined by the prosecution and they have not even ventured to examine the witness/complainant invoking Section 284 of the Criminal Procedure Code. Moreover, the reasons given for non-examination of the complainant is unsustainable. The constitutional right of the accused to cross-examine the complainant should not be taken away by stating frivolous reasons.

17. He further submitted that PW2 is not a reliable witness. PW2 in cross examination has stated that it was informed by the accused that on the day of the first demand itself, the accused has

taken Rs.1000/- and papers from the de-facto complainant whereas the prosecution has projected that the demand is reduced from Rs.2000/- to Rs.1000/- and therefore, the entire development of the prosecution case is trembled. The reason to approach the accused is to measure his land and enter his name in the patta but it could not be done as the defacto complainant is not enjoying the land separately as the land is a joint patta. Unless, it is demarcated and the defacto complainant enjoys separate possession of the land, he could not apply for survey and patta. Therefore, there is no chance of the defacto complainant approaching the appellant for any relief as stated above and the same, is unsustainable. Moreover according to PW2, there were number of strangers in the house of the appellant when the alleged bribe was given by the defacto complainant to the appellant which cannot be acceptable as no public servant would venture taking bribe in the midst of strangers. The circumstances in which the accused received bribe as mentioned by the prosecution cannot be believed. PW2 was not able to state exactly where the seizure mahazar was drawn and further told that only xerox copies were seized. Furthermore, he admitted that Ex.P4/seizure mahazar was signed by him in the taluk office. PW2 does not even know the facts of the case. It is a fact that the application of the defacto complainant has been rejected by PW5 since he is not in separate possession and enjoyment. Hence, the question of issuing patta by the accused or anybody does not arise at all. Once the file of the complainant was closed, the question of demand or acceptance by the appellant never arises and the offence under Section 7 of the PC Act does not attract and hence, other offences also have been ruled out.

18. In respect of the contradictions, they are not minor but major contradictions in regard to witnesses namely, PW2, PW11 and documents like mahazar drawn, place of signature of the seizure mahazar/Ex.P4, preparation of mahazar etc. The Investigating Officer did not seize the call details between the defacto complainant and the appellant which is very much essential when the prosecution has not examined the defacto complainant. Thus, he prayed this Court to acquit the appellant since the prosecution has not proved the case against him beyond reasonable doubt.

19. The learned counsel for the appellant relied on the

following decisions to support his contentions:

a)The decision of the Hon'ble Supreme Court in ***Soundarajan V. State rep. by the Inspector of Police Vigilance Anti-Corruption, Dindigul*** reported in ***2023 SCC Online SC 424,*** wherein it has held as follows:

> *"11. ... To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26 th July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused. "*

b) In the case of **N. Vijayakumar V. State Of Tamil Nadu [AIR 2021 SC 766],** wherein the Hon'ble Apex Court has held that mere recovery of tainted money, divorced from circumstances under which such money and article is found is not sufficient to convict accued when substantive evidence in case is not reliable.

The relevant portion of the order reads as follows:

> *9. ... It is fairly well settled that mere recovery of tainted money, divorced from the circumstances under which such money and article is found is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In view of the material contradictions as Crl.A.@S.L.P.(Crl.)Nos.4729-30 of 2020 noticed above in the deposition of key witnesses, the benefit of doubt has to go to the accused appellant.*

c)In the case of ***Neeraj Dutta Vs. State (Government of NCT of Delhi*** reported in ***2022 Live Law SC 1029***, the Hon'ble Supreme Court had held that the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 of Section 13(1)(d)(i0 & (ii) respectively of the Act.

20. Further, he drew the attention of this Court to the cases namely, **P.Satyanarayana Murthy vs Dist. Insp. of Police & Anr.** reported in **AIR 2015 SC 3549; V.Venkatasubbharao Vs**

State [2006 SCC OnLine SC 1383]; and Mohanmeda Bee Vs. The Inspector of Police, Vigilance and Anti-Corruption, Villupuram in Crl.A.190 of 2012 dated 12.06.2018

21. Concluding his arguments, the learned counsel for the appellant contended that without proper appreciation of evidence, the trial Court had convicted the accused and sentenced him as stated earlier which is *perse* illegal and hence prayed to allow the appeal.

22. Considered the rival submissions made by the respective counsels and also perused the materials available on record.

23. This Court had taken into consideration of the dictum laid by the Hon'ble Supreme Court in *Neeraj Dutta and Soundarajan cases* as stated supra in regard to the issue of demand and acceptance of the illegal gratification and the same has to be proved by the prosecution beyond reasonable doubts. Considering the aforesaid decisions and on a careful consideration

of the facts and circumstances of the case and on a proper analysation of the evidences, it is seen that there are several contradictions in the case of the prosecution namely, demand and acceptance of the bribe amount, place of occurrence, seizure mahazar and preparation of mahazar, memo of arrest etc. The appellant herein is not at all a competent authority and the application made for name transfer in the patta does not arise at all as per the evidence of PW1/sanctioning authority in his order had stated that the de facto complainant is in possession of joint patta and have to get the land divided and then only he can apply to effect name transfer in the patta and the same was got in writing by the accused from the complainant/deceased. The above said fact was also reiterated by PW5/Tahsildar in his chief and cross examination. He has categorically stated that the requisition is not for sub-division of the patta for the property and award patta but in the present case on hand, the patta is a joint patta and unless it is in separate independent possession of the de-facto complainant, it could not be sub-divided and therefore, he closed the file as no order is necessary which is evident from Ex.P9. But in the cross examination, it was elicited that the de-facto complainant had requested to effect name transfer in patta and not for sub-dividing the property and in this regard, the appellant had given a report and in pursuance of it, the chief surveyor recommended closure of the file and on that basis, PW5 has closed the file on 02.12.2009. Hence, it is crystal clear that since then no work is pending with the accused to demand and ask for bribe. According to Ex.P2/ entrustment Mahazar, it was drawn between 11.30 a.m. and 12.30 p.m. Further by 1.30 pm., trap party started from the Vigilance office, Cuddalore and reached Virudhachalam by 3.00 p.m. / 3.30 p.m. The police were waiting from 3.30 p.m. to 7.00 p.m. and there is no evidence to show that before proceeding to Virudhachalam, the de-facto complainant even verified whether the accused is available in his house or office. The de-facto complainant had made calls to the accused but the vital source namely, the call register / details were not produced before the trial Court which shows the absence of substantial evidence for the visit of the trap party to the house of the accused. PW2 has further stated that only after coming to Virudhachalam, TLO asked complainant to speak to the accused which seems that even without proper preparation, the trap was conducted. PW2 in his cross examination has stated that the de- facto complainant tendered money to the accused even without asking. The de-facto complainant, who was alive till 2015 was not examined in trial court, but after his death only the police reported that de-facto complainant is dead. But it is relevant to note that the commencement of examination of the other witnesses was of the year 2010. In these circumstances, the initial demand on 08.01.2010 and demand before trap could not be proved by substantial evidence and the fact is that the seizure mahazar was not drawn in the house/Ex.P4 of the accused. PW2 was not in a position to state where exactly Ex.P4 was drawn and who had prepared the same. Hence, his evidence can neither be treated as substantial evidence nor trustworthy evidence. In regard to Ex.P5/Rough sketch, it is not clear where the witnesses were positioned in the SOC. Hence, it is a clear violation of para-49 of V & AC Manual. PW2 further stated that there were two arrest memos. The analysis of evidence of P.W.11/TLO is essential to disprove the prosecution version as he has deposed that the trap party waited for 4 hours in Virudhachalam and admitted that the de-facto complainant called the accused after reaching Virudhachalam. However in his cross examination, TLO has accepted that the de-facto complainant had given his complaint by 8.30 a.m., but it was registered at 9.15 a.m. It is predominant to note the fact that PW2 in his chief examination had stated that Ex.P4/seizure Mahazar was drawn in Taluk office, Virudhachalam whereas in his cross examination, he has stated that it was prepared in the house of the accused.

24. Moreover, PW11 has admitted in cross examination that there is no mentioning of the seizure of application of the de-facto complainant in the mahazar and also accepted the fact that he has taken notes of the events happened in the house of the accused and prepared Ex.P4 in Taluk office which was not produced. Furthermore, time of preparation of Ex.P5/Rough sketch was not mentioned and PW1 admitted that no statements of the accused has been recorded and the call details were not seized. The crucial document namely, the original application of the de-facto complaint submitted by him in the Taluk office was not produced. It is pivotal to note that the defacto complainant was not at all examined by the prosecution to prove their case which is fatal and creates suspicion of the trap proceedings and moreover, there are several contractions in the evidences, as well as in the documents

marked by the prosecution, which does not prove the offences levelled against the appellant and thus paves the way for this Court to arrive at the conclusion that the prosecution has not proved their case beyond reasonable doubts and therefore, the appellant is entitled for the benefit of doubt.

25. For the foregoing reasons, the Criminal Appeal stands allowed. Consequently, the conviction and the sentence passed by the trial Court against the appellant herein in Spl.Case No.14 of 2010 dated 15.11.2018, is set aside. The appellant is acquitted of all charges levelled against him. The fine amount, if any paid, is directed to be refunded. The bail bonds executed, if any, shall stand terminated. Connected M.P. is closed.

06.09.2024

Index: Yes/No
NCC : Yes/No
Order: Speaking/Non Speaking
DP

To

1.The Chief Judicial Magistrate,
Special Court, Cuddalore.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Cuddalore.

3.The Public Prosecutor,
Madras High Court, Chennai.

VIVEK KUMAR SINGH, J.

DP

JUDGMENT MADE IN
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