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Crl. A. Nos.775 & 776 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal Nos.775 & 776 of 2018

1.L.Gurusamy

... Appellant in Crl.A.No.775/2018
Accused-1

2.Anandh Aruputharaj

... Appellant in Crl.A.No.776/2018
Accused-2

Vs.

State by The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai C.C.-3, Chennai – 28
(Crime No.4/AC/2008)

... Respondent

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of the learned Special Judge cum Chief Judicial Magistrate, Chengalpattu made in Spl.C.C. No.15 of 2010 dated 08.11.2018 and acquit the appellants/accused 1 & 2 from the charges

For Appellant : Mr.K.Shankar
(in Crl.A.No.775 of 2018)

For Appellant : Mr.G.Sathiaraj
(in Crl.A.No.776 of 2018)

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



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COMMON JUDGMENT

These appeals are directed respectively by A1 and A2 challenging the conviction *inter alia* for the certain offences under the PCA .The sentence imposed details are as below:

<i>Accused Rank</i>	<i>Offences</i>	<i>Sentence imposed</i>
A1	Section 7 of Prevention of Corruption Act	Three years simple imprisonment with a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
	Section and 13(1)(d) r/w.13(2) of Prevention of Corruption Act	Three years simple imprisonment with a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
A2	Section 12 of Prevention of Corruption Act	Two years simple imprisonment with a fine of Rs.3,000/-, in default, to undergo six months simple imprisonment.

2. The case of prosecution is as below:

- a) A1 (appellant in Crl.A 775 of 2018) was working as an Inspector in Guduvancherry Police Station in the traffic wing between 19.05.2007 and 29.09.2008. A2 was a tender coconut vendor at near Otteri Junction, GST Road, Opposite to Crescent Engineering College.
- b) PW2 Anand was a transporter owning a fleet of tipper-Lorries.
- c) Be that as it may, on 24.9.2008 A1 had told PW2 that if former was



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paid Rs.2000/- as bribe every month, then he would not stop the tipper-lorries of Anand and book any case involving the lorry. Unwilling to comply with the demand of A1, on 29.09.2008 PW2 preferred Ext P2 complaint to the respondent, receiving which PW6 Ali Basha registered Ext P7 FIR at about 11.00 am in the morning. PW6 would swing into action to organize a trap, and entrusted Rs. 2000 (Rs.500 x 4), all smeared with phenolphthalein powder, to PW2 vide Ext. P3 Entrustment Magazar in the presence of PW3 and PW4, both of who were shadow witnesses for the trap.

- d) Later at about 5 pm on same day (29.09.2008) PW2 along with PW3 met A1 at near Otteri Junction while A1 was regulating the traffic. A1 was then said to have ascertained if PW2 had brought the bribe amount, and directed PW2 to pay the same to A2, the tender coconut vendor, referred above. Accordingly, PW2 paid the said amount to A2 and alerted PW6.
- e) PW6, who had parked himself with the rest of his team some 40 meter away from SOC, arrived at the scene, took both A1 and A2 to the nearby vegetarian restaurant and conducted the trap test. The test proved positive. PW6 searched the residence of A1 and it yielded nothing. The investigation was taken over by PW11, and he after



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completing the investigation laid the final report.

3.1 The trial court framed appropriate charges as detailed in the opening para and proceeded to try both the accused persons for the charges framed against them. During trial the prosecution examined PW1 to PW11, and produced Ext. P1 to P14 and MO 1 to MO 6.

3.2 On appreciating the evidence before it, the trial court proceeded to convict both the accused persons, and also sentenced in the manner indicated in the opening paragraph. Its line of reasoning included that after conviction the court asked both the accused A1 and A2 whether they have any objection regarding the sentence to be imposed against them, both accused did not raise any objections when the court questioned them on the quantum of sentence after declaring them guilty of the charges. This Judgement is now under appeal.

4. The learned counsel for the appellants submitted as below:

- a) PW2 in his testimony has deposed that on 29.09.2008, he preferred a complaint the way PW6 wanted him to write and then proceeded to testify that shortly before the trap, he met A1 at the police booth near Vandalur signal, and introduced his manager and paid Rs.2000/- to A2.



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He did not mention anything about the demand for money at that time, and merely paid the money to A2. So far as PW3, the shadow witness who accompanied P.W.2, he turned hostile, as he did not support the version of the prosecution. Turning to PW4, he merely saw PW2 going along with PW3 and conversing with A1, and did not say what transpired between them.

- b) In this regard the testimony of PW10 is significant. He is the driver of the lorry belonging to PW2. In his testimony he had stated that A1 required PW2 to meet him. He however, did not give any specific date about the same. And most significantly PW10 nowhere had deposed that A1 had demanded bribe whereas PW2 claims that A1 had demanded bribe. Indeed PW2 has screened PW10 in his testimony.

Summing up his argument the learned counsels submitted that there is no evidence to show that A1 demanded money, nor is there anything to associate A2 with A1. Neither the triple criteria necessary to constitute the offence U/s 7 of PCA nor the ingredient of Sec 12 of PCA have been established beyond reasonable doubt.

5. Per contra, the learned Prosecutor submitted that there is no reason why P.W.2 should pay Rs.2,000/- to a tender coconut vendor unless he has been instructed



by A1. And when the trap-test vis-a-vis A2 proved positive, he has to explain why he received the money from P.W.2. When he has not explained then the presumption under Sec.20 of the PC Act becomes conclusive.

6.1 The prosecutor's submissions are not without merit, except that there is no connecting cord between A1 and A2 which is essential to establish the respective charges against them. The prosecution story strictly should start from P.W.10, the lorry driver of P.W.2. He says that A1 wanted his owner (P.W.2) to meet him. And he does not say why. P.W.2 says that on 24.9.2008, he met A1 when he made the demand. And there was no reference to A2 at that time. Nor does he make a reference to his own driver, P.W.10. When on 29.09.2008, he met A1, he does not state that there was a reiteration of demand for bribe by A1, or at least that there was a reminder about the bribe sum. And P.W.3 who accompanied him had turned hostile. And finally P.W.2 paid the planted currencies to A2, a tender-coconut vendor.

6.2 If the charge against A1 is considered, none of the triple criteria – the demand, payment and acceptance of bribe, which law requires to be proved simultaneously, have not been proved. If A2's case is concerned, he faces the charge of abetment to receive bribe under Sec.12 of the Act, but even though he



had received the money, who he had abetted is a mystery since there is hardly any evidence to establish the connect between A2 and A1. After all without a person needed for abetting, charge against A2 cannot be established.

7. In conclusion this Court holds that notwithstanding the presumption under Sec.20 of the PCA operating against A2, still the prosecution has not been able to provide the critical links to bring home the guilt of the appellants beyond all reasonable doubts.

8. What is disappointing is that the trial court has factored in the answer given by the appellants to the question from the court as to the quantum of punishment which the court proposes to impose as an admission of guilt. What a horrific understanding of law by the trial court! When the Court has already informed the accused of its decision to convict the accused persons before him, and the question posed was only as to the quantum of sentence, what does the Court expect the accused persons to answer? If they say that they are not guilty, will the court acquit them? These are far too fundamental concepts, and it is time the Judicial Academy take stock of what is happening.



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9. In the result, both the appeals are allowed and the judgment of the learned Special Judge cum Chief Judicial Magistrate, Chengalpattu made in Spl.C.C. No.15 of 2010 dated 08.11.2018 is set aside and the appellants/accused 1 & 2 are set at liberty. The bail bonds executed by the appellants are cancelled and the fine amount paid by the appellants are directed to be refunded.

03.10.2024

Asr/ds

Index : Yes / No

Neutral Citation : Yes/No

To

1. The Special Judge cum Chief Judicial Magistrate, Chengalpattu

2. The Public Prosecutor, High Court, Madras



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N.SESHASAYEE, J.

Asr/ds

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