IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2025
PRONOUNCED ON : 16.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.617 of 2018

Sivakumar ... Appellant

Vs.

The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-III,
Chennai. ... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed against the appellant on 03.10.2018 on the file of the learned Special Judge and Chief Judicial Magistrate, Chengalpattu in Special Case No.4 of 2010 dated 03.10.2018 and acquit him from all the charges.

For Appellant	:	Mr.R.Rajarathinam Senior Counsel for Mr.P.Kannan Kumar
For Respondent	:	Mr.S.Udayakumar Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal is filed to set aside the impugned judgment in Special Case No.4 of 2010 dated 03.10.2018 on the file of the learned Special Judge and Chief Judicial Magistrate, Chengalpattu.

2.The appellant/accused in Special Case No,4 of 2010 was convicted by the Trial Court by judgment dated 03.10.2018 and sentenced him to undergo three years simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo five months simple imprisonment for the offence under Section 7 of Prevention of Corruption Act, to undergo three years simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo five months simple imprisonment for the offence under Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act and the sentences to run concurrently.

3.The case of the prosecution is that the defacto complainant/P.W.2 lodged a complaint to the respondent on 20.11.2008 stating that he owns a property in Kolapakkam village, survey number 245/17, to an extent of 1793 square feet, in which a house is constructed for 800 square feet. For expansion of Chennai Airport, the Government acquired lands in the villages of Manapakkam, Kolapakkam and Gerugambakkam in Sriperumbudur taluk. The defacto complainant's land also came under acquisition and Rs.750/- per sq.ft. was fixed as value for the property. The defacto complainant submitted his sale deed, parent document, encumbrance certificate, approved plan and other connected documents to the Special Tahsildar (Land Acquisition), Chennai Airport Expansion Scheme, Sriperumbudur. He was enquired on 22.09.2008 in reference to the documents submitted. On the same day at about 3.00 p.m., the appellant, Assistant Grade Revenue Inspector, collected the mobile number of the defacto complainant and informed him that he would soon check the documents for which he had to be taken care for early payment of compensation. The defacto complainant was constantly called by the appellant to the mobile number demanding bribe. On 10.11.2008 at about 12:30 p.m., the defacto complainant met the appellant in his office, at that time, showing a record the appellant informed the defacto complainant that Rs.15 lakhs compensation was awarded and further questioned the defacto complainant as to why he removed the wooden door, windows and grill gate from the property, which were already acquired by the Government and that compensation amount will be proportionately deducted. For not doing so, the appellant demanded Rs.25,000 as bribe amount. Further, demand continued. On 18.11.2008 the appellant called the defacto complainant and asked him to come to his office on 20.11.2008 and pay Rs.5,000 as advance and pay the balance amount later.

4.Not willing to give bribe, the defacto complainant met the Deputy Commissioner of Police, Vigilance and Anti-Corruption on 20.11.2008 at about 8:30 a.m. The Deputy Commissioner of Police forwarded the complaint to P.W.6/Trap Laying Officer to register a case. Thereafter, the Trap Laying Officer registered the case in Crime No.7 of 2008 under section 7 of the Prevention of Corruption Act. On 20.11.2008 at about 9.00 a.m., two official witnesses from Pay and Accounts Office, namely P.W.3/Anandan and one Vasudevan summoned to be witnesses and they appeared before the respondent. On the same day at about 9:30 a.m., pre-trap proceedings explained. Entrust Mahazar/Ex.P3 prepared, and thereafter, as per the advice of the Trap Laying Officer, the decoy/P.W.2 and P.W.3/accompanying witness reached the office of the appellant at about 11:30 a.m. The Trap Laying Officer, the official witnesses and others positioned themselves around the office and waiting for the signal. The decoy/P.W.2 and P.W.3 went into the office of the appellant. The appellant enquired and demanded the bribe amount of Rs.5,000. The defacto complainant handed over the amount of Rs.5,000,/- which the appellant received in his right hand, counted it, and placed it in his left pant pocket. P.W.3 came out, gave pre-arranged signal. Thereafter, P.W.6 along with the other trap team entered the office. The appellant was identified by P.W.2, phenolphthalein test conducted on both hands of appellant, which tested positive. Thereafter, the appellant handed over the bribe amount from his left pant pocket, which was verified with the serial numbers recorded in the entrusment mahazar. Subsequently, alternate clothing was given to the appellant, his pant pocket wash collected and it also tested positive. The appellant was questioned about the documents pertaining to the defacto complainant, to which the appellant informed that all the documents were with PW4/Special Tahsildar, who produced the documents filed by the de facto complainant (Ex.P4 to Ex.P12). Thereafter, seizure mahazar/Ex.P13 prepared. The accused's house searched, but nothing was seized. The appellant/accused arrested, produced and remanded to judicial custody. P.W.4/Special Tahsildar detailed the scheme and defacto complainant was one of the claimants for compensation. P.W.5/Scientific Assistant attached to the Forensic Department confirmed MO1 to MO3, hand wash, and pant pocket wash of the appellant, tested positive for phenolphthalein. P.W.6 is the Trap Laying Officer. PW7/Investigation Officer who took up investigation after trap, recorded the statements of witnesses and collected documents. P.W.8 collected the sanction order issued by P.W.1 and filed the charge sheet in this case. During trial, P.W.1 to P.W.8 examined; Ex.P1 to Ex.P27 marked and M.O.1 to M.O.5 produced on the side of the prosecution. On the side of the defence, Ex.D1 marked. On conclusion of trial, the Trial Court convicted the appellant as stated above.

5.The contention of the learned senior counsel for the appellant is that in this case, the appellant is only an Assistant Grade Revenue Inspector and the job assigned to him is to collect documents from the Sub Registrar's office for the lands acquired. As regards the receipt of claimants' applications, verification of the documents and fixation of land acquisition compensation is to be done by the Special Tahsildar, who has to verify the documents and recommend the same to the District Revenue Officer and to the District Collector, who will fix the compensation amount and thereafter the Commissioner of land reforms to approve the same. In this case, the defacto complainant appeared before the Special Tahsildar on 22.09.2008 and submitted all the documents, the same were verified by the Special Tahsildar, which is confirmed by P.W.2 as well as the special Tahsildar/P.W.4. In the complaint/Ex.P2, it is admitted by the defacto complainant that he removed the wooden doors, windows and grill gates in the acquired property and hence, fearing exposure of his illegal act and to evade any action, reduction of compensation amount, in offensive he lodged the present false complaint against the appellant. In the complaint, he has specifically mentioned that he was contacted by the appellant from his mobile number and the demand was persistent through the mobile phone. The Trap Laying Officer, though aware of these facts, not verified the same. It becomes significant, more so, when the complaint was received at 8:30 am on 20.11.2008, immediately FIR/Ex.P18 registered at the same time. Normally, after the receipt of the complaint, the antecedents of the person complained of has to be verified, but in this case, it is admitted by P.W.6 that he immediately registered the FIR, which is further confirmed by P.W.7, the subsequent Investigating Officer stating that there is no material to show that any verification about the appellant done. Thus, in this case, FIR came to be registered and immediately P.W.3 and another official witness, namely Vasudevan, were summoned at about 8:45 am. They appeared before the respondent at about 9:00 am, and again there is no material to show that any official requisition was given for the presence of these witnesses. Hence, these witnesses are nothing but interested witnesses, who are compelled to toe the line of the prosecution. P.W.2 admits that he went along with his friend Nazir, who is doing real estate business and is familiar with the officials of Vigilance and Anti-corruption. One Ali Basha, Deputy Superintendent of Police received the complaint and forwarded the same to P.W.6. It was this Ali Basha who was present throughout the trap proceedings until the trap was completed, which is admitted by P.W.6 and P.W.7. Further, in this case, the place of trap itself becomes doubtful. As per P.W.2 and P.W.3, they went to the office of the appellant which is situated on the second floor and handed over the bribe amount. But in the rough sketch/Ex.P19 the place of trap was shown at the entrance of the building Ground floor, Trap Laying Officer admits rough sketch. In this case, the office of the appellant is situated on the second floor and at the entrance there is no office or space, which is only a way through.

6.The specific case of the appellant is that when he was entering the office, P.W.2 along with P.W.3 came there, thrusted money in his hand which was warded of, fell on the floor and thereafter, P.W.6 and others including the Deputy Superintendent of Police Ali Basha forced the appellant to collect the money and keep it in his pant pocket. Thereafter, it was projected as though the appellant demanded bribe amount in his room. P.W.4Special Tahsildar confirms that he was informed by the Vigilance and Anti-Corruption that the bribe amount was received by the appellant outside the office and he was brought to the office. In fact, P.W.4 submitted a report/Ex.P16 to his superior officer, in which it is clearly recorded that the trap proceedings took place outside the office. Thus, the rough sketch/Ex.P19 and the report/Ex.P16, and on the admission of PW6, the Trap Laying Officer, the place of occurrence shown in the ground floor, coupled with the evidence of other witnesses that the alleged trap was in the ground floor at the entrance of the building. It is to be seen from the rough sketch that adjacent to the office of the appellant, there is a tea shop, a mechanic shop, a mess, a post office, office of the Block Development Officer, MLA office and other business establishments, which confirms that the presence of the public is there, but no public witness examined in this case. On the other hand, the place of occurrence shifted and hence, the foundational fact of the case becomes doubtful. The decoy/P.W.2 in this case is a motivated person who has animosity against the appellant for the reason that the appellant questioned the defacto complainant about the illegal removing of wooden doors, windows, and iron grill gates after the building was assessed and valuation fixed. This is the admitted position of the appellant. The appellant referred to Ex.D1, which is the counter filed in the Writ Petition in W.P.No.23359 of 2009 filed by the petitioner/appellant against the District Revenue Officer and the District Collector with regard to his suspension from service. In the counter, the District Revenue Officer confirmed, defacto complainant removing the articles after valuation was fixed. Ex.D1 was marked through P.W.1 and it is not disputed. P.W.3 is the accompanying witness who admits that in the same building of Vigilance and Anti-Corruption, his office is also situated and normally he comes to the office by 10.00 a.m. On the day of the trap, he reported to the Vigilance office at about 8:45 a.m. Though he claims that it was under his superior's instruction, no requisition letter or deputation letter was produced in this case for the presence of P.W.3 and one Vasudevan. PW3 is an obliging witness, he states that the appellant received the money and kept it in his pant pocket. P.W.4/Special Tahsildar admits that the accused was brought before him after the trap was completed and files were received from him.

From his evidence, it is seen that the appellant had no role in the land acquisition proceedings except for collecting the details from the SRO office. The Trap Laying Officer confirms that a complaint was received at about 8:30 a.m., FIR registered at the same time and the presence of the official witness at 8:45 a.m. He admits that the complaint, entrustment mahazar and FIR are typed in the same font. He admits the presence of Deputy Superintendent of Police, Ali Basha during the entire trap. It is further submitted that in this case, no call details produced to confirm that there was constant demand by the appellant. He further submitted that in this case, the foundational fact becomes highly doubtful with regard to the demand, place of occurrence, and recovery. The appellant proved the animosity of the defacto complainant against the appellant. The Trap Laying Officer, who is interested in success of the trap with obliging witness, projected as though the appellant demanded bribe, amount was received and the same was recovered from the appellant. The admitted position is that the appellant had no role or authority in fixing the compensation. Further, in this case, the compensation amount already fixed, disbursed on 28.11.2008 in a public function in the presence of the Labour Minister and the compensation amount cheques handed over to the beneficiaries. The Trial Court failed to consider all these attendant circumstances but merely went by the evidence of interested witnesses, namely, P.W.2, P.W.3 and P.W.6 and the phenolphthalein report.

7.In support of his contentions, the learned senior counsel for the petitioner relied upon the decision of this Court in the case of ***K.P.Kolanthai vs. State by Inspector of Police, Anti Corruption Wing, Dharmapuri*** reported in ***(2019) 3 MLJ(Crl) 713*** for the point that the prosecution miserably filed to prove the foundational facts viz., demand, acceptance and recovery of the amount of illegal gratification beyond al reasonable doubts. He relied upon the decision of this Court in the case of ***A.Deenadayalan vs. State represented by Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai City-II Detachment, Chennai*** reported in ***2018 (1) LW(Crl) 699*** for the point that when a higher ranking official participated in the trap proceedings, the non-examination of that witness weakens the case of the prosecution. He also relied upon the judgment of this Court in the case of ***C.Varadappan vs. State rep. by the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Dharmapuri [Crl.A.No.331 of 2016 dated 06.12.2023]*** for the point that presumption under Section 20 of Prevention of Corruption Act can be drawn against the accused only after the demand and acceptance of illegal gratification is proved beyond all reasonable doubt. He further relied upon the decision of this Court in the case of ***T.S.Ramaswamy vs. State of Tamil Nadu*** reported in ***1994 Crl.L.J 545*** of the point that when there is no reference to the presence of witness and their position, accused entitled to acquittal. He also relied on the decision of this Court in the case of ***Mohanmeda Bee vs. State*** reported in ***MANU/TN/2701/2018*** for the point that the rough sketch gains importance when the scene of occurrence has been disputed.

8.The learned senior counsel further relied in the case of ***T.S.Ramasamy Vs. State of Tamil Nadu*** reported in ***1994 Crl.LJ 545***, wherein it is held as follows:

> *"This Hon'?ble Court while dealing with evidence regarding the place of occurrence, has held that in all trap cases like this, it is necessary for the Prosecution to file a sketch also showing the office or the place where the accused was trapped. Otherwise, it would be difficult and unsafe to accept the mere oral evidence of the official trap witnesses when they give evidence that they witnessed the*

> *payment of bribe. It was further held that it is sufficient if the accused showed preponderance of probabilities of his defence and it need not be proved beyond all reasonable doubts as in the case of the Prosecution."*

9.In the case of ***Sujit Biswas v. State of Assam*** reported in ***(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677***, the Apex Court held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of 'may be' true but has to upgrade it in the domain of 'must be' true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

10.Further, in the case of ***V.Sejappa Vs .State by Police Inspector Lokayukta, Chitradurga*** reported in ***(2016) 12 SCC 150***, the Hon'ble Supreme Court, while referring to several earlier judgments, has held as follows:~

> *"18.It is well settled that the initial burden of proving that the accused accepted or obtained the amount*

other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act."

11.The learned Government Advocate (Crl. Side) strongly opposed the appellant's contention and submitted that in the complaint/Ex.P2, it is submitted that the defacto complainant submitted his documents seeking compensation to the Special Tahsildar on 22.09.2008. On that day, the appellant informed him that he would ensure speedy disbursement of the compensation amount if he was taken care of and the appellant collected the mobile number of the defacto complainant. Thereafter, the appellant regularly contacting the defacto complainant. On 11.10.2008 when the defacto complainant went to the appellant's office to enquire about the status of compensation, a demand was again made. Further, to justify his demand, an objection was raised by the appellant stating that wooden doors, windows and iron grill gates were removed by the defacto complainant without their knowledge and reporting the same would deny the defacto complainant his compensation amount. Hence, he demanded Rs.25,000/- as bribe amount and Rs.5,000/- as advance. This was followed by another demand on 18.10.2008 through mobile. Not willing to pay the bribe amount, the defacto complainant lodged a complaint to the respondent on 20.11.2008 and thereafter pre-trap proceedings were arranged, enlisting P.W.3 and one Vasudevan as witnesses for the trap. The trap team went to the appellant's office at about 11:30 a.m. P.W. 2 and P.W. 3 were asked to get into the office, meet the appellant and if demand was made for the bribe then amount was to be paid. P.W.2 and P.W.3 entered the appellant's office; the appellant demanded bribe and the amount was handed over to him, which he received in his right hand and kept in his left pant pocket. After receiving the pre-arranged signal, the trap team entered the appellant's office. The appellant was identified and he was asked to dip both his hands in the sodium carbonate solution, which turned pink. His left pant pocket wash collected. The files pertaining to the defacto complainant were produced by P.W.4/Special Tahsildar and the same were collected. Therefore, the accused was arrested and produced for remand. The house of the accused was also searched. A recovery mahazar was drawn recording all the proceedings, seizure of documents and thereafter handed over to the Investigating Officer. P.W. 7/Investigating Officer took up the investigation, recorded the statements of the witnesses and request sanction for prosecution. In the meanwhile, he was transferred. P.W. 8 received the sanction order from P.W.1 and filed charge sheet before the Trial Court. In this case, the appellant demanded the bribe amount not once but on three occasions. Thereafter, the trap laid. The appellant received the bribe amount and the trap was successful. The scientific evidence confirmed the appellant receiving the bribe amount. In this case, P.W.2 and P.W.3 clearly deposed about appellant's receiving bribe amount and P.W.6 confirms recovery. The appellant demanded the bribe amount both to process the claim for compensation and not to deduct the compensation amount for removal of certain articles. P.W.1 is the sanctioning officer, who had gone into the materials and after satisfying granted sanction. In this case, there have been minor discrepancies. This was blown out of proportion and projected as though there was no trap, the appellant was forced to handle the trap amount. The case suggested by the appellant is that one Nazir was instrumental for the defacto complainant to lodge a complaint and the Deputy Superintendent of Police Ali Basha were behind the entire trap. Though as a superior officer Ali Basha was present in few places, he was not instrumental in laying the trap or for the recovery. P.W.6 independently acted in this case, recorded all the happenings by entrustment mahazar, recovery mahazar and witnesses confirmed the same. Had the Appellant found that Nazir and Deputy Superintendent of Police Ali Basha had influenced and it was a motivated trap, nothing stopped the Appellant from summoning Nazir and Ali Basha, Deputy Superintendent of Police and examining them as witnesses in this case. The appellant, taking advantage of the counter filed in the Writ Petition in W.P.No.23359 of 2009 which is marked Ex.D1 and the discrepancy found in the rough sketch/Ex.P19 and report Ex.P16, would no way affect the case of the prosecution. The Trial Court considering all these aspects, had rightly convicted the appellant. Hence prayed for dismissal.

12.Considering the submission made and on perusal of the materials, it is seen that in this case, the property of P.W.2/defacto complainant was acquired for Airport Expansion. P.W.4 is the Special Tahsildar. The defacto complainant submitted the documents to the Special Tahsildar. Ex.P4 is the

Register which confirms the receipt of documents and Ex.P5 is the enquiry report dated 27.09.2008. The de facto complainant's submission of the property documents, namely. Ex.P6, Ex.P7, Ex.P8, Ex.P9, Ex.P10 and Ex.P12 is not in dispute. Likewise, Ex.P11 is the valuation report for the building on the property. Admittedly, these documents seized from P.W.4/Special Tahsildar which is recorded in the seizure master/Ex.P13 and no document or material was found with the appellant. The appellant's duty is to collect relevant documents from the concerned SRO for the acquired lands, which is confirmed by the sanctioning authority/P.W.1 and Special Tahsildar/P.W.4. From Ex.D1, it is seen that the defacto complainant removed certain articles from the already valued property which was acquired. On apprehension that the compensation might get reduced and delayed, a complaint was given against the appellant. In this case, admittedly the complaint was received on 20.11.2008 at 8:30 a.m.. On the same day, FIR registered and at 8:40 a.m. official witnesses summoned and without conducting any background check and verification of the appellant, FIR registered in haste. The pre-trap proceedings were held between 9:00 a.m. and 10:00 a.m. Immediately, the trap team reached the appellant's office at about 11:30 a.m.. Thus, it is seen that there was no time available for any verification of the genuineness of the complaint and also about the conduct of the appellant. P.W.6 and P.W.7 confirm the same. Likewise, the presence of Ali Basha, Deputy Superintendent of Police is admitted by P.W.2, P.W.3, P.W.6 and P.W.7 from the time of receipt of the complaint till the arrest of the appellant. Admittedly, Ali Basha, Deputy Superintendent of Police is a superior officer to the Trap Laying Officer and the investigating officer. An independent investigation by an Investigating Officer of lower rank cannot be expected. In this case, P.W.6 confirms that the trap took place outside the office and thereafter, the appellant was brought to the office. P.W.4/Special Tahsildar sent a report/Ex.P16 to the District Collector and to the District Revenue Officer confirming trap took place outside the premises. Further, it is seen that in Ex.P19, the scene of occurrence is shown in the Ground floor, entrance of the building. Admittedly, the office is situated on the second floor of the building. Thus the presence of P.W.2 and P.W.3 on the second floor handing over the bribe amount demanded by the appellant becomes highly doubtful. The appellant gives explanation that as he was entering the office, the amount was thrusted on him and he warded it off, later, he was forced to handle the same gains credence. In 313 Cr.P.C. questioning, the appellant specifically explained the circumstances and that the occurrence took place in the Ground floor, entrance of the building and not on the second floor. P.W.4/Special Tahsildar and his report/Ex.P16 confirms the same. It is to be seen that the appellant is not the authority to receive the application, verify it, and recommend for compensation, it is the Special Tahsildar, the District Revenue Officer and the District collector, who are authorized to do so. The appellant demanding amount for ensuring compensation is an allegation without substance. Added to it, the removal of articles is admitted by the District Revenue Officer in the counter in the writ petition. When the foundational fact itself gets demolished, the entire structure is bound to fall. Thus, from the above, it is clear that the prosecution had miserably failed to prove the case against the appellant beyond all reasonable doubt. In view of the above, this Court is inclined to set aside the conviction and sentence imposed on the appellant.

13.In the result, this Criminal Appeal stands allowed setting aside the judgment dated 03.10.2018 in Special Case No.4 of 2010 passed by the learned Special Judge and Chief Judicial Magistrate, Chengalpattu. The appellant is acquitted. Fine amount if any paid shall be refunded.

16.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1.The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-III,
Chennai.

2.The Special Judge and Chief Judicial Magistrate,
Chengalpattu.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

Crl.A.No.617 of 2018

16.09.2025