BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	24/10/2024
Date of Pronounced	28/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.145 of 2019

T.Santhanam : Appellant/Sole Accused

Vs.

The State rep. By
The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur.
(Crime No.4 of 2008) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment rendered by the Chief Judicial Magistrate-cum-Special Judge, Thanjavur District at Kumbakonam in Special Case No.67 of 2014, dated 28/02/2019 and set aside the same and consequently acquit the appellant honourably and pass such any or other orders.

For Appellant : Mr.K.M.Subrahmaniam

For Respondent : Mr.R.Meenakshi Sundaram
Additional Pubic Prosecutor

JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence passed in Special Case No.67 of 2004, dated 28/02/2019 by the Special Court/Chief Judicial Magistrate, Kumbakonam.

2.**The case of the prosecution in brief**:-

The de-facto complainant was living in Kaveri Nagar, Kumbakonam. In 2005, he borrowed Rs.3,000/- from one Sivasamy and others. He was repaying the money with interest on daily basis. Since he closed his petty shop, he was not able to pay the money. So, they threatened him to pay Rs.3,000/- in total. But he has stated that he already paid Rs.4,500/-. Since he was criminally intimidated, he lodged a complaint on 21/05/2008 with the Sub Inspector of Police, in Kumbakonam East Police Station. He was asked to come on the next day. On 25/02/2008, A2-Shanthanam enquired Sivasamy. At that time, A1 was also present. A1 asked him to pay Rs.10,000/- to Sivasamy. But he refused. Later, the money was reduced to Rs.5,000/-. Under compulsion, he was forced to sign in a pro-note. Later, A2 issued receipt in CSR No.225 of 2008. Thereafter, A1-Sevlarajan demanded Rs.1,000/- for settling the issue. Based upon the complaint, trap was laid. Case in Crime No.4 of 2008 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested during trap. After completing the formalities of the investigation, final report was filed. It was taken on file by the Chief Judicial Magistrate/Special Judge, Kumbakonam, in Special Case No.67 of 2014 for the offence under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After completing 207 Cr.P.C proceedings, framed the following charges against the accused persons:-

> *(i)On 29/08/2008 at about 07.00 p.m, when the de-facto complainant gave a petition seeking for the settling the issue between himself and one Sivasamy, the accused demanded Rs.1,000/- as bribe amount for settling the issue and thereby, the accused committed an offence punishable under section 7 of the Prevention of Corruption Act, 1988; and*

> *(2)In pursuance of the same transaction, the accused by using their position as public servant obtained Rs.1,000/- as pecuniary advantage for themselves from the complainant and thereby the accused committed an offence punishable under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.*

3.To that charges, the accused pleaded not guilty and claimed to be tried.

4.During trial process, on the side of the prosecution, 17 witnesses were examined and 37 documents marked. Apart from that, MO1 to MO5 were also marked. One witness was examined on the side of the accused, but no document was marked.

5.PW2 was living in Kaveri Nagar, Kumbakonam. In 2005, he borrowed Rs.3,000/- from one Sivasamy and others. He was repaying the money with interest on daily basis. Since he closed his petty shop, he was not able to pay the money. So, they threatened him to pay Rs.3,000/- in total. But he has stated that he already paid Rs.4,500/-. Since he was criminally intimidated, he lodged a complaint on 21/05/2008 with the Sub Inspector of Police, in Kumbakonam East Police Station. He was directed to come on the next day. On 25/02/2008, A2-Shanthanam enquired Sivasamy. At that time, A1 was also present. The accused asked him to pay Rs.10,000/- to Sivasamy. But he refused. Later the money was reduced to Rs.5,000/-. Under compulsion, he was forced to sign in a pro-note. Later, A2 issued receipt in CSR No.225 of 2008. Subsequently, the first accused Selvarajan demanded Rs.1,000/- for settling the issue. He expressed his inability to pay the money. On 08/08/2008, when he was going near Gandhi Park at about 05.00 pm. A1 asked him whether he brought money demanded by him. On 13/08/2008, he went to the police. At that time, A2 was present. He told A2 that he will bring the money soon. On 29/08/2008 again, he went to the Kumbakonam East Police station. Again, A1 demanded Rs.1,000/-. Similarly A2 demanded Rs.1,000/-. At that time, he told that he will take Rs.500/- for himself and SI will take Rs.500/-. So, he lodged a complaint with the Vigilance and Anti-Corruption Department under Ex.P4.

6.Further event is spoken by the Inspector of Police, Manokaran, who is examined as PW16. On getting prior permission, on 28/09/2010 at about 12.30 pm, he registered a case in Crime No.4 of 2008 for the offence under section 7 of Prevention of Corruption Act. He made a request to the Government Department to depute two officials. In pursuance of the above said request, one Venkatesan and Sankar appeared before him. He introduced them to PW2. Money was handed over by PW2 consisting of ten 100/- rupees. A mahazar was prepared. Entry was made in the mahazar noting down the serial numbers. Thereafter, sodium carbonate solution was prepared. He directed one of his police staff to count the money, he counted the same. He was directed to dip his right and left hand in a separate solution. There was no change in colour. Later, the phenolphthalein powder was applied in the currency notes. The concerned police official was instructed to count the money, he counted the same. Again two solutions were prepared, in which the concerned police official was directed to dip his hands. It turned pink. He instructed PW2 to have the money with him and give it to the accused if demand is made. He instructed the official witnesses to accompany PW2 and witness the events. If the money is received by the accused, PW2 was instructed to give signal.

7.For all the events, mahazar was prepared in which all the witnesses signed. Along with the police team, at about 05.30 pm, they went to the Kumbakonam East Police Station. PW2 and the official witnesses instructed to visit inside the police station and followed his instructions. The police team were hiding in a nearby area. PW2 and the official witnesses came out stating that SI and HC were not available. Again, they went at about 07.30 pm.

8.Further event is spoken by PW2. When they entered into the police station, A2 alone came there and made enquiry whether he brought the money. He made enquiry regarding A1. A2 told that he can give money to him so that Rs.500/- will be given to A1. That amount was received by A2, counted and put the same in his left shirt pocket. He promised that half of the amount will be given to A1-Selvarajan. During that attempt, the official witnesses and PW3 was also present along with him. They came out of the house and gave signal as instructed earlier.

9.The further event is spoken by the Inspector of Police Manoharan. After getting signal from PW2, they went to the police station. PW2 narrated the events and identified A2. After making preliminary enquiry, sodium carbonate solution was prepared in which the accused namely A2 was instructed to dip his hands separately. He dipped his hands. Both solutions turned pink. Both were collected in a separate container, labelled and sealed.

10.He made enquiry regarding the money received as bribe and the accused handed over Rs.1,000/- from his shirt pocket. They compared the serial numbers mentioned in the mahazar with that of the serial numbers consisting which were handed over by the accused. They found to be tallied. For which prepared a mahazar, in which the accused and all the witnesses signed. They also prepared separate mahazar, in which also all the witnesses signed. At that time, A1 Selvarajan came to the office. He made enquiry with him. He told that he alone instructed A2 to demand bribe amount from PW2. Then, he recovered the relevant records. All the accused dipped their hands in another solution. It turned pink. It was also collected in a separate container, labelled and sealed. He prepared rough sketch, observation mahazar regarding the place of occurrence. After due intimation to the court, search was made in the house of A2. During search Passbook, RC book and some receipts were seized. They were seized under mahazar in which A2-Santhanam signed. Similarly, search was made in the house of A2. Certain documents and Bank Passbook were recovered and prepared a mahazar. The accused were arrested and remanded to custody. He submitted the original records, material objects to the concerned court.

11.The further investigation was taken by PW17. He recorded the statement of the witnesses. He made a request for sanction by the competent authority, sent the material objects for chemical analysis. After receiving the chemical analysis report and sanction order, completed the investigation, filed a final report, on 30/09/2009.

12.PW3 is the official witness, who accompanied PW2 during pre-trial and trap events. He corroborated PW2 in material particulars.

13.PW4 has spoken about the para duty performed by him.

14.PW5 has spoken about the maintenance of records in the police station. He was present during trap proceedings and signed in the documents prepared by the Trap Laying Officer.

15.PW6 is the son of PW2. He went along with PW2 on the previous occasion. But he was not aware of the conversion that took place between A2 and PW2.

16.PW7 has spoken about the trap events.

17.PW8 has spoken about the duty assigned to him during the time.

18.PW9 is not related to the issue, so also PW10.

19.PW11 has spoken about the duty assigned to the accused. PW12 is the lender of PW2. He has spoken about the loan borrowed by PW2, enquiry undertaken by the police and the compromise reached in the police station and the payment of money made by PW2.

20.PW13 was spoken about the trap events.

21.PW15 is the Scientific Officer, who examined the material objects sent to him by the police through court and for chemical analysis. He filed a report under Ex.P34. PW15 is sanctioning authority. With that, the prosecution side evidence was closed.

22.The accused were questioned under section 313(1)(b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted against them.

23.At the conclusion of the trial, the trial court found the accused guilty and convicted for the offence under section 7 of the Prevention of Corruption Act and sentenced them to undergo 3 years RI and imposed a fine of Rs.1,000/- in default to undergo 3 months SI; and for the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, sentenced them to undergo 3 years RI and imposed a fine of Rs.1,000/- in default to undergo 3 months SI and directed the sentences to run concurrently.

24.Against which, this criminal appeal is preferred by the appellant.

25.Heard both sides.

The background facts:-

26.The de-facto complainant namely PW2 Ayub Khan gave the complaint against his loaner on 21/05/2008 stating that they demanded excess amount over and above the repayment. Based upon the above said complaint, A2 conducted enquiry on 22/05/2008. The matter was compromised between the de-facto complainant and his vendor, who was examined as PW12 on the side of the prosecution. We will go the evidence later.

27.Now it is the allegation against A1 is that he demanded Rs.1,000/- for settling the issue. The above said demand was again made on 08/08/2008. After that, A2 namely Santhanam also demanded that amount. Again on 29/08/2008, A1 made the very same demand. At that time, A2 told the de-facto complainant that the amount of Rs.1,000/- will be shared between himself and A1. In pursuance of the above said issue, on 29/08/2008 the de-facto complainant lodged the present complaint. Based upon which, further process was taken by the Trap Laying Officer. When trap was laid, A2 accepted the tainted money. Based upon which, A1 namely Selvarajan and A2 Santhanam were charge sheeted.

28.Now we will go the defence taken by the accused. Charge against A1 made abated. Only in respect of A2, the matter has to be decided.

29.Now we will go to the defence taken by A2 namely Santhanam who was examined as DW1.

30.He would say that on 22/05/2008, the de-facto complainant gave the complaint against his vendor namely Sivasamy, Kumar and Periasamy. He made an entry in the general diary and issued CSR No.225 of 2008. He placed the complaint before A1-Selvarajan. Compromise was reached the de-facto complainant, by which the de-facto complainant agreed to pay Rs.5,000/- in instalment basis. Later, he was transferred to Crime Branch. On 29/08/2008, he returned to the police station after finishing the work in the court. The de-facto complainant came to him and informed that he repaid the entire amount on instalment basis to Sivasamy at the rate of Rs.1,000/- for three months. He was not able to pay the balance amount. But Sivasamy is making trouble. So, the de-facto complainant requested A2 for help. When he was collecting the case paper from his bike, the de-facto complainant put Rs.1,000/- in his pocket, requested him to hand over the money to Sivasamy. But A2 refused to receive the money and return the same to the de-facto complainant. Only at that time, the Vigilance people came to that place, he was arrested. So, this is the defence taken by A2.

31.So, from the defence, it is seen that the trap is not denied and disputed. What is denied is the acceptance and recovery of money from him.

32.Now in the light of the above said definite case of the prosecution, we will go to the main issue.

33.Now let us take the evidence of Sivasamy PW12. He would say that the de-facto complainant borrowed Rs.5,000/- in 2005. The de-facto complainant repaid the amount. But instead, he gave the complaint against him before the Kumbakonam East Police Station, on 25/05/2008. The accused conducted enquiry namely both the accused and in that enquiry, they compromised the issue and asked him to receive the money on instalment basis. In pursuance of the above said compromise, the de-facto complainant paid money at the rate of Rs.1,000/- in three instalments. Regarding which, he made a note under Ex.P32. He would further say that the balance amount of Rs.2,000/- was not paid by the de-facto complainant, in spite of his repeated demand. But he never approached the accused regarding that issue. But during the course of cross examination, he would admit that he informed the default committed by the de-facto complainant with police. Now during the course of the cross examination, the accused took another defence stating that the de-facto complainant repaid the amount except Rs.990/-. But however, the accused pressurised and compelled the de-facto complainant to pay Rs.5,000/-. So, because of that only, the de-facto complainant entertained grudge against the accused. But this cross examination goes contra to the evidence given by A2 namely Santhanam. We need not concentrate much on that issue.

34.From his evidence, it stands established that regarding the repayment of the alleged amount, issue arose between Sivasamy and the de-facto complainant. But here, the involvement of the accused to settle the money issue comes.

35.Repeated directions, guidelines were issued not only by the courts, but also by DIG instructing the police officials not to make any enquiry or enter into the issue over the civil dispute. But here, in violation of the above said guidelines issued by the courts from time to time, the accused involved themselves in making compromise. It is not the duty of the police official to involve themselves in the money matters. The accused ought to have directed either Sivasamy or the de-facto complainant to resolve their issue through civil process. But instead made a compromise which is *per se* illegal. This is the strong circumstance, which is available against the accused.

36.In the light of the evidence of PW12, now we will go the evidence of the de-facto complainant.

37.He would say that for making compromise, A1 Selvarajan demanded Rs.1,000/-. When initial demand was made, A2 was not available. On 08/08/2008, at about 05.00 pm, A1 again demanded money, for which the de-facto complaint promised to give the same after sometime. On 13/08/2008 he went to the police, at that time, A2 was available. He informed A2 about the demand made by A1. A2 asked him to give the money. On 29/08/2008 after paying third instalment, he went to the police station. At that time, A1 again made enquiry regarding the demand. He asked him to contact A2. A2 also made enquiry whether he brought the money demanded by him. At that time, A2 told the de-facto complainant that Rs.1,000/- will be shared between himself and A1. These are the dates of initial demand, according to the prosecution.

38.Regarding the initial demand, the prosecution relied upon the evidence of PW6. But he turned hostile regarding the demand. According to him, on 28/08/2008, he was taken to Kumbakonam East Police Station by the de-facto complainant. On that date, he could not go along with him. On the next day, both went to the police station. But he was waiting outside the police station. What was transpired between A1 and the de-facto complainant was not known to him. So, his evidence is not supporting the prosecution case on that account.

39.Now the evidence of PW2 regarding the initial demand has to be verified by taking into account the subsequent event. Whether there was any chance for the accused to have demanded the bribe amount on those three days. On 29/08/2008 itself, he lodged a complaint with the Trap Laying Officer. In pursuance of which, arrangements were made regarding the pre-trap arrangement. PW3 corroborates the Trap Laying Officer. No material was placed on record by the accused regarding the pre-trap event. So, we need not concentrate much upon this event.

40.Now we will go to the trap event.

41.PW2 would say that along with PW3 as instructed earlier, they went inside the office of the accused. At about 07.45 pm, A2 came to the police station. At that time, A1 was not available. A2 alleged to have made enquiry regarding the bribe amount promising the de-facto complainant to give Rs.500/- out of Rs.1,000/- to A1. In pursuance of the above said demand, the de-facto complainant gave the tainted money. This portion of his evidence is corroborated by, PW3 the shadow witness.

42.Whether any trap was made as alleged by the prosecution has to be verified in the light of the other witnesses.

43.PW4 was working as sentry on 29/08/2008. He would say that at about 08.00 pm, A2 was brought to the police station by the Vigilance people. From his evidence, it is seen that trap was laid on that date when A2 was available in the Crime Branch, taken to the police station where PW4 was working as Sentry.

44.PW5 was working as SSI in East Police Station Kumbakonam. When the Vigilance officials conducted trap, he witnessed the event namely conduction of sodium carbonate solution test and handing over of money by A2 to the Trap Laying Officer, etc. facts. So, the evidence of PW4 and PW5 supports the case of the prosecution regarding the trap.

45.Now in the light of the above said evidence on record, we will go to the argument advanced by the appellant/A2 regarding this event.

46.The appellant would submit that no preliminary enquiry was made by the Trap Laying Officer before registering FIR. So, the question which arises for consideration is whether in the above said circumstances, preliminary enquiry regarding the conduct or antecedent of the accused is required. There is no compulsion by any law or procedure in this regard. But *prima facie*, the complaint averments clearly indicates that the accused involved themselves in the money matter, conduction of preliminary enquiry is noway required.

47.It is argued that there is a delay on the part of the complainant in lodging the complaint against the compromise; even though the complaint was lodged at 12.00

noon, it was received by the court only at 08.00 pm; A2 attended the court duty; So, there was no occasion for him to demand and accept the bribe amount. But these things cannot be taken into consideration. Absolutely, there is no false implication by the de-facto complainant.

48.As mentioned above, even though it was stated by the accused that since because the accused compromised the issue in favour of the vendor, the de-facto complainant entertained grudge is absolutely without evidence, more particularly in the light of the above said defence taken by A2 during evidence.

49.The delay in reaching the FIR in the court and the delay in lodging the complaint against the compromise, does not assume any importance at all.

50.The argument that there was no occasion for the second accused to demand money after compromise is without any basis. A specific evidence of the de-facto complainant is that after making the compromise, the accused demanded the bribe amount.

51.No doubt that till the repayment of the third instalment, no complaint was given by PW2. But that will not lead to inference that PW2 lodged the complaint due to his dis-satisfaction. This does not assume any importance at all.

52.Now the next argument is that the Trap Laying Officer did not record the statement of the accused which is in violation of the Vigilance manual.

53.As stated above, the defence is that there is no voluntary acceptance of the amount. So, the question which arises for consideration is whether A2 has probabalised his defence.

54.As mentioned above, the evidence of PW2 and PW3 are specific with regard to the demand and acceptance of the bribe amount on the date of the trap.

55.PW5 was specific in his evidence to the effect that on the enquiry made by the Trap Laying Officer with A2, he handed over the money from taking the same from his shirt pocket. But the evidence of A2 is that when he returned back the money to the de-facto complainant, at that time, the Vigilance Officials entered, compelled him to correct the money his hand. There is no reason for PW3 to give evidence against A2 regarding the recovery. Even if we say that PW2 and PW3 evidence supports the case of the prosecution, but PW5's evidence regarding recovery cannot be disbelieved and doubted. So, the defence taken by A2 is not probabalised.

56.So, over-all assessment of the evidence of PW2, PW3 and PW5, the prosecution established the fact that A1 demanded the bribe amount again on the date of the trap, accepted the same and recovery was made from A2.

57.In the written argument submitted by A2, it has been stated that the first complaint lodged by PW2 was suppressed by the prosecution. But it is not the defence taken by A2 during the course of cross examination of PW2. So, the argument stated in the written statement is without any evidence. Even to the Trap Laying Officer, no such defence was taken. In the initial complaint, there was no indication against A2. Most of the written arguments are concentrated upon the oral evidence. But these arguments are not born out by records, since PW2 was very specific and clear on his evidence against A1 on the demand made by him on various dates. None of the arguments raised in the written arguments are worth considering regarding demand, acceptance and recovery.

58.The appellant would rely upon the following judgments in support of his contention:-

(i)Neeraj Dutta Vs. State of N.C.T. Of Delhi (2023 LiveLaw (SC) 211;

(ii)K.Shanthamma Vs. The State of Telangana (Criminal Appeal No.261 of 2022, dated 24/02/2009); and

(iii)Bhagwan Singh and others Vs. State of M.P (Appeal (Crl.)No.1272 of 1999, dated 22/03/2002);

59.But none of these judgments support the case of the appellant on any issue.

60.As mentioned above, receiving of money from the de-facto complainant is admitted by A2 and he has not probabalised his defence even remotedly that the money was put in his pocket with the request to hand over the same to PW12-Sivasamy. So, absolutely, these judgments will not support his case.

61.So, from the facts narrated above, I am of the considered view that in view of the subsequent proof of demand, the demand made by A1 and A2 on various dates also stands established. The evidence of PW2 on this account has to be accepted and accordingly, it is accepted.

62.In the light of the above said discussion, the conviction and sentence rendered by the Trial court requires no interference. Regarding the sentence period considering the oldness of the matter and the amount involved, the sentence period is reduced to **one year RI for both offences.**

63.With the above said modification, this criminal appeal stands **dismissed.**

28**/01/2025**

Index : Yes/No
Internet : Yes/No
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To,

1.The Special Judge/Chief Judicial Magistrate,
Kumbakonam.

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

G.ILANGOVAN,J

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Crl.A(MD)No.145 of 2019

28/01/2025