BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	16/10/2024
Date of Pronounced	09/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.69 of 2019

Amaiappan : Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Virudhunagar,
Virudhunagar District.
In Crime No.05 of 2010. : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence imposed by the Special Court for Prevention of Corruption Cases and Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur, in Special C.C No.31 of 2014 on 31/01/2019.

For Appellant : Mr.R.Anand

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

J U D G M E N T

This Criminal Appeal is filed against the conviction and sentence imposed by the Special Court for Prevention of Corruption Cases and Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur, in Special C.C No.31 of 2014 on 31/01/2019.

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

The complainant namely S.Subbaiahpandi is residing at East Street, T.Managaseri village, Srivilliputhur Taluk, Virudhunagar District. His father S.Samuthiram died on 24/02/2010. He was in need of his Legal-Heir Certificate to effect name change in his father's land records, to withdraw his father's money from the Bank and to redeem the jewels. He prepared a petition in his mother Therammal's name, addressed to the Tahsildar, Srivilliputhur, get the thumb impression of her and presented it to the accused S.Amaiappan in his office at Malli on 23/04/2010 at about 11.00 am. The accused who received the petition, demanded Rs.500/- as bribe to make arrangement for getting the legal heir certificate. Based upon the complaint, Trap was laid, investigation was undertaken and a final report was filed before the Special Judge-cum-Chief Judicial Magistrate, Virudhunagar District @ Srivilliputhur, which took cognizance in Special CC No.31 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:-

(i)The accused was working as Village Administrative of T.Managaseri Village, Srivilliputhur Taluk, Virudhunagar District, between the period 23/08/2008 and 06/05/2010. When he was working as Village Administrative Officer, on 23/04/2010 at about 11.00 am, the de-facto complainant gave a petition seeking legal heir certificate; at that time, the accused demanded Rs.500/- as bribe to make arrangement for getting legal heir certificate and thereby, the accused committed the offence under section 7 of the Prevention of Corruption Act, 1988;

(ii)In pursuance of the same transaction, the accused by using his position as a public servant obtained Rs.500/- as pecuniary advantage for himself from the complainant and thereby the accused committed the offence 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 the trial process, on the side of the prosecution, 15 witnesses have been examined and 18 documents marked. Apart from that, MO1 to MO3 marked. On the side of the accused, no oral or documentary evidence was adduced.

5.***The case of the prosecution, as narrated through the prosecution witnesses:-***

PW2-S.Subbaiahpandi is living in T.Managaseri Village, Srivilliputhur Talk and working in a Crackers Unit. His father by name S.Samuthiram, died on 24/02/2010. His father was having property and Bank account, apart from the jewels under mortgage. So, he required the legal heir certificate. So, a petition was preferred in the name of his mother by name Therasammal. On 23/04/2010, he approached the accused. At that time, the accused demanded Rs.500/- for issuing the legal heir certificate. Again, he approached on 05/05/2010 and made enquiry about the application submitted by him. Again, the accused demanded Rs.500/- as bribe, asked him to bring a witness on the next day.

6.On 06/05/2010 at about 9.30 am, he went to the Vigilance and Anti-Corruption Department and informed the Inspector Ganesh Dass about the demand made by the accused. His statement was reduced into writing in a typewritten form signed.

7.The further event is spoken by the Trap Laying Officer Ganesh Dass, namely PW14. He registered the case in Crime No.5 of 2010 under section 7 of the Prevention of Corruption Act 1988. He submitted the original documents to the concerned court and copies to the concerned higher authorities. He requested the Government to depute two responsible officials for assisting the trap proceedings. As per the request made by him, one S.Saravanan and Jaysankar appeared before him. PW2 was introduced to the witnesses. PW2 handed over Rs.500/-. He prepared the mahazar mentioning the currency note numbers. He requested the Head Constable Chandrasekarashanmugam to prepare the sodium carbonate solution. The official witness Jaisankar was required to dip his hands in the solution. He dipped his hands. But there was no change in the colour. Later, phenolphthalein powder was applied to the currency notes. Later, the official witness was instructed to count the same and he counted. Another sodium carbonate solution was prepared, wherein the official witness dipped his hand. It turned pink. The entire events were recorded in the form of mazahar, in which all the witnesses signed. He instructed PW2 to give the money to the accused if any demand is made.

8.With this instruction, he handed over the money to PW2 and instructed PW2 to give signal if money is received by the accused; he requested the official witnesses to accompany PW2 to witness the event. With the above said instructions, the police team as well as the witnesses proceeded to the office of the accused. At about 11.30 am, they reached the office. The police team was hiding in a nearby area. As instructed PW2 and other witnesses were directed to go inside the office and give a signal.

9.PW2 has spoken the further event. He has stated that he was taken by the accused to one TASMAC shop. At that time, he demanded money. He gave Rs.500/- to the accused, the accused counted the same and put the same in his waist belt. As instructed earlier, he gave signal to the police team. On receiving the signal, the police team came to that place. He identified the accused to the police team. Narrated the events.

10.The further event is spoken by the Trap Laying Officer. After the identification of the accused by PW2, sodium carbonate solution was prepared in which the accused was directed to dip his hands in two separate solutions. Both solutions turned pink. Both were collected, labeled, sealed. He enquired about the money. The accused handed over the money by taking the same from his waist belt. Notes were compared with reference to the serial number mentioned in the mahazar. Both were found to be tallied.

Inner side of the belt pocket was also subjected to sodium carbonate solution test with the help of cotton. Now the cotton turned pink. The entire events were reduced into writing in the form of mahazar, in which the accused and the witnesses signed and for the money separate mahazar was prepared in which the accused and other witnesses signed. He recovered relevant register from the accused. The accused was arrested, search was made in the house of the accused between 05.30 to 05.45 pm. But no recovery was made. He submitted the original records, material objects to the court and handed over the investigation to PW15.

11.PW15 took up the investigation, recorded the statement of the officials attached to the Revenue Department and other witnesses, submitted the report to the court, send the material objects for chemical examination, submitted the draft final report to the Director of Vigilance and Anti-Corruption Department. After that, he submitted a request to RDO for issuing sanction order. He received the report from the Lab and sanction order from the competent authority. After examining them, filed a final report, on 16/07/2011.

12.PW3 is the official witness, who corroborated PW2 with regard to the events.

13.PW4 is spoken about the process made on the request made by PW2 for legal heir certificate.

14.PW5 and PW7 have spoken about the events took place on 05/05/2010 in the accused office.

15.PW8 has spoken about the trap and arrest of the accused by the police.

16.PW9 and PW10 have spoken about the statement recorded from them by the Village Administrative Officer for issuing legal heirs certificate to PW2.

17.PW11 is the mother of PW2 in whose name the legal heir certificate application was given.

18.PW12 was working as salesman in the TASMAC shop, Malli. He has spoken about the arrest made by the police team.

19.PW13 is the Scientific Assistant working in Chennai in the FSL. She examined the material objects submitted to her through Court and after analysis, submitted a report under Ex.P12.

20.After closure of the prosecution evidence, when the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

21.After considering the evidence, both oral and documentary, the trial court found the accused guilty for the offences under sections 7 and 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo 3 years RI and to pay a fine of Rs.5,000/- in default to undergo 6 months RI for the offence under section 7 of the PC Act; and further convicted him under section 13(2) r/w 13(1)(d) of the Act, sentenced him to undergo 3 years RI and to pay a fine of Rs.5,000/- in default to undergo 6 months RI and directed to run the sentences concurrently.

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

23.Heard both sides.

24.PW11-Therasammal is the resident of T.Managaseri village. Her husband name is S.Samuthiram. Her husband died on 24/02/2010. They had six childrens. PW2-de-facto complainant is the elder son. Therasammal made a petition for getting legal heir certificate of her husband. That application was presented through the de-facto complainant on 23/04/2010. That application or petition was received by PW4-Ravichandran, who was working as Junior Assistant attached to Srivilliputhur Taluk Office. on 26/04/2010. He made his side initial, forwarded the same to the Revenue Inspector for further action and in the endorsement, PW5 Chandrasekar who was working as Head Quarters Deputy Tashildar made an order, forwarding the same to the Revenue Inspector and from the Revenue Inspector, it was forwarded to the accused for enquiry. In all those processes, entries were made in the relevant records, registers, which is not disputed.

25.In pursuance of the above said order passed by PW5, the file was received by the accused and he took up the enquiry process by examining the witnesses in the village. PW9-Sangilikalai and PW10-Raja who was working as President of T.Managaseri Village Panchayat appeared on various dates. They have also spoken about the enquiry made by the accused and further, as per the process and procedure, paper publication was effected inviting objections if any from the public for the purpose of issuing the legal heirs certificate. The matter was kept pending by the accused without forwarding to the competent authority namely Taluk Tasildhar. This was spoken by PW7 Marimuthu, who was working as Tasildhar, Srivilliputhur during the relevant time. According to him, as per the file, on 26/04/2010 itself, publication was ordered in the village inviting objections from the villagers. But till 06/05/2010, no further action was taken by the accused. Now in the meantime, it is the case of the prosecution that the accused demanded Rs.500/- as bribe amount for issuing the legal heirs certificate on 05/05/2010 with PW2. Later on 06/05/2010, the complaint was lodged by PW2. This is the background facts, according to the prosecution.

Now the defence:-

26. It is not denied by the accused that the file was received by him as mentioned above and he took up the enquiry process as per the procedure. But the allegation of demand of bribe amount, acceptance is denied by him stating that PW2 voluntarily gave the money when he was under intoxication. That was the statement given by him even before the Trap Laying Officer after recovery.

27.The next defence taken is that as per the procedure, 15 days time is required for completing the process of enquiry and submitting a report. But even before the expiry of 15 days, there was compulsion on the part of PW2 to issue a legal-heir certificate or send the report immediately. That was not complied by him. To wreck vengeance, the complaint was given. That was the second defence taken.

28.So, according to the defence, there was no voluntary demand of bribe and acceptance. That was voluntarily given by the de-facto complainant when he was under intoxication. That two defences are taken by the accused. In the absence of any motive suggested to PW2 to falsely implicate the accused in this matter, then we can go to the further events to verify whether the evidence of PW2 can be believed in all respects.

Now the Trap:-

29.As per the evidence of the Trap Laying Officer, PW2, shadow witness PW3, it is seen that the pre-trap arrangements were properly made as per the procedure, which is in-fact cannot be disputed by the accused. Because in the absence of the accused only, the above said pre-trap arrangements were made. On going through the records, I am not satisfied with the pre-trap arrangement made on this aspect, etc. There can be no doubt on that.

30.Now coming to the trap event, PW2 would say that as per the instructions given by the Trap Laying Officer, along with PW3 he entered the office of the accused on 06/05/2010 at about 01.00 pm. At that time, the shadow witness namely Saravanan stood near the window. He made enquiry with the accused about his request. In his presence, PW9 signed in the statement. At that time, the accused demanded the money for making arrangements. He gave the money treated with phenolphthalein powder. The accused accepted the same, counted and put the same in his waist belt. It was about 03.00 pm at that time. As per the instruction given, he made signal, upon which the police team entered the office of the accused.

31.Now we will go to the evidence of PW3 shadow witness. He corroborated PW2 in all material particulars as mentioned above. But there is contradiction between the evidence of PW2 and PW3 about the occurrence place as pointed out by the appellant.

32.PW2, as mentioned above, would say that the accused received money inside the office. PW3 would say that he did not visit inside the office of the accused. But the accused and PW2 came out side of the office and went near a TASMAC shop, located near Malli Bus stop. At that time, the accused made an enquiry regarding the money demanded by him. PW2 gave the money, the accused accepted, counted and put the same in his waist belt.

33.Now we will go to the evidence of the Trap Laying Officer. He would say that the accused and PW2 went near TASMAC shop and from that TASMAC area, PW2 made signal as instructed by him earlier, where from recovery was made. PW3 and Trap Laying Officer corroborated each other. But PW2, as mentioned above, has given a different place of occurrence.

34.Now we will go to the cross examination on him. As mentioned above, he was cross examined to the effect that before they went to the TASMAC Shop to have drink, PW2 gave Rs.500/- to the accused, but he refused to receive the same. But after taking the drink, he gave the money and that was accepted by him. This is the cross examination made by the accused to PW2. This clearly indicates, as stated above, receiving of money by the accused is not denied and disputed by him. What is disputed is only with regard to the alleged demand as illegal gratification.

35.So, the place of occurrence spoken by PW2 during the course of chief examination is clarified by the accused himself, of course dangerously, during the course of cross examination. So, the mistake committed by PW2 in mentioning the place of occurrence, in his chief examination may not assume any importance.

36.The learned counsel appearing for the appellant would rely upon the judgment of the Hon'ble Supreme Court reported in ***Jagtar Singh Vs. State of Punjab (2023 LiveLaw (SC) 232)*** for the purpose of argument that if the prosecution is not able to prove the demand, section 13(d)(1) and (2) of the Prevention of Corruption Act, 1988 will not be attracted simply because of the tainted money was recovered from the hands of the accused. But from the analysis made, even though PW2 at one point of time would say that initial demand was made on 23/04/2010, there is no corroboration. But the demand alleged to have been made on 05/05/2010 is corroborated by his own version in the complaint, dated 06/05/2010, the demand made is established.

37.So, the question which arises for consideration is whether the argument advanced by the appellant is sustainable.

38.But, as mentioned above, in the judgment of the Constitution Bench of the Hon'ble Supreme Court rendered in **Neeraj Dutta Vs. State (Govt. of NCT of Delhi) [(2022)SCc Online SC 1724]** even from the circumstance that was brought on record by the prosecution, the guilt of the accused has been proved beyond all reasonable doubt.

39.As mentioned above, contradictory stands were taken by the appellant during the course of the cross examination of the witnesses. The ground that was taken by the accused during the course of the cross examination of PW14 is that as if PW2 dropped the tainted money in the pocket of the accused, there is no acceptance of his money. But this is quite contra to the earlier defence taken by the accused.

40.The next point that was raised by the appellant is that the investigation taken by the PW12 is not proper since the Trap Laying officer did not record the statement of the accused in a separate form. It is the evidence of the Trap Laying Officer that the explanation offered by the accused was recorded by him in the recovery mahazar. The above said recording of the explanation offered by the accused in the mahazar itself is sufficient enough to satisfy the instructions in the vigilance manual.

41.So, I find no reason to interfere regarding the conviction and the sentence passed by the trial court.

42.In the result, this criminal appeal is **dismissed**, confirming the judgement of conviction and sentence passed by the trial court.

09/01/2025

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

1.The Special Judge,
Special Court for Trial of Cases under
Prevention of Corruption Act,
Virudhunagar District.

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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J

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Crl.A(MD)No.69 of 2019

09/01/2025