BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2025

DELIVERED ON : 25.02.2025

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.63 of 2018

K.Balakrishnan ... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Madurai.
Crime No.4 of 2007 ... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374 (2) Cr.P.C., to set aside the Judgment and Conviction dated 31.01.2018 by the learned Special Judge for Prevention of Corruption Act Cases, Madurai in Spl. Case No.24 of 2011 and acquit the appellant.

For Appellant : Mr.K.Sundaravel

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

JUDGMENT

This Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence, dated 31.01.2018 passed by the Special Judge for Prevention of Corruption Act Cases, Madurai, in Spl. Case No.24 of 2011 and acquit the appellant.

2.The case of the prosecution is that PW2 and PW4 are brothers. They purchased one house from TNHB on instalment basis. The accused is an employee of TNHB. On 07/03/2007, PW2 met the accused and got the house allotment order. Thereafter, on 08/06/2007, PW4 met the accused in his office and asked for sale deed. He informed PW2 about his visit to TNHB office. PW4 told PW2 that the accused asked him to bring stamp papers for Rs.3,300/-, type expenses Rs.200/- and Rs.500/- as bribe. Not willing to bribe, the de-facto complainant lodged a complaint with the respondent police. Based upon the complaint, a case in Crime No.4 of 2007 was registered for the offence punishable under section 7 of the Prevention of Corruption Act, 1988. The accused was arrested in the trap. After completing the investigation, final report was filed. It was taken on file by the Special Court for Trial of Cases under Prevention of Corruption Act, Madurai, in Special Case No.24 of 2011 for the offences under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

> *(i) The accused is an employee of TNHB has demanded Rs.500/- for getting the sale deed for the house allotment to the complainant and thereby, he has committed an offence under section 7 of the Prevention of the Corruption Act; and*

(ii)In the course of the same transaction, the accused by illegal means and by abusing his position as a public servant obtained himself of the said amount of Rs.500/- as pecuniary advantage from the complainant and thereby, he has committed an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

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, 11 witnesses have been examined and 21 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

5.PW2 Ramkumar was living in Sellur Iruthayarajapuram along with his brother Rajendran. On 29/01/2007, the house in L.No.302 was allotted to him by the Tamil Nadu Housing Board. He received the letter to produce the relevant documents to the Department. On 05/03/2007 along with his brother, he went to the office of the accused and handed over the documents. On 07/03/2007, the accused handed over the allotment letter and informed that the sale deed will be executed later. After three months, his brother contacted the accused. At that time, he demanded Rs.500/- as bribe amount, apart from Rs.3,300/- for stamp paper and Rs.200/- towards typing expenses. On 11/06/2009 at about 05.00 pm, along with his brother, he went to the office of the accused. At that time, the accused enquired whether he brought Rs.500/-. They replied that they have not brought the money. They were taken to the Superintendent by name Vaijayanthi Mala. She also told them to give the money as per the demand made by Balakrishnan . On 12/06/2007 at about 10.00 am, they went to the office of the Vigilance and Anti Corruption Department and lodged the complaint under Ex.P2.

6.The complaint was received by the Inspector of Police, Rajkumar, who was examined as PW10 and registered the case in Crime No.4 of 2007 under section 7 of the Prevention of Corruption Act, submitted the original documents to the concerned Court and copies to the higher authorities. At his request, on 12/06/2007 at about 02.00 pm, one Seenivasan and Syed Ismail appeared before him. At that time, he introduced the official witnesses to PW2 and informed them about the test to be undertaken. He directed PW2 to produce five hundred rupee notes Rs.500/- that he had brought. Sodium Carbonate Solution was prepared and one of the Police Officials was directed to dip his hands in the solution. There was no colour change. Phenolphthalein powder was applied to the currency notes. Again, the police official counted the notes and dipped his hands in the solution. It turned pink. He prepared the mahazar mentioning the serial number of the currency notes, in which all the witnesses signed. He instructed PW2 to go to the office of the accused and give the money if demanded by him and asked the official witnesses to accompany PW2 and witness the event, etc. Further instructed PW2 to give signal if the accused receives the money. After completing the formalities, the events were reduced into writing in the form of mahazar. At about 04.00 pm, they started from the office and went to the office of the accused. As instructed earlier, PW2 and the official witnesses were instructed to go inside the office and if money is demanded by him, it must be handed over and give signal. They were hiding in a nearby place. PW2 and the witnesses went inside the office.

7.The further event is spoken by PW2. He along with his brother namely Rajendran and PW3 went to the office of the accused. They contacted the accused. At that time, again he asked whether he brought the money. The money was received by the accused and put the same in his right hand pant pocket. He was asked to wait for sometime, so that the certificate was signed by the Engineer. When they were returning from the office, he demanded and enquired about the money. At that time, PW2 told him that the entire money was given to Balakrishnan. After that, they made signal.

8.The further event is spoken by the Inspector of Police PW10. PW10 has enquired PW2 and other witnesses with regard to the happening. They narrated the events. After that, the accused was identified by PW2. He was sent out. One Sreenivasan, First Grade Officer was requested to witness the occurrence. Sodium Carbonate Solution was prepared, in which the accused was directed to dip his both hands separately. Both solutions turned pink. Both were collected in a separate bottle, labelled and sealed. On enquiry, the accused disclosed that he accepted Rs.500/- from PW2. Out of Rs.500/-, Rs.200/- for Superintendent Radha Vaijayanthimala, Rs.100/- for himself and Rs.50/- each for Watchman Manonaran and Office Assistant Kannan. The accused handed over Rs.400/- consisting of 4 hundred rupee notes. The official witness Syed Ismail counted the same and compared with that of the serial numbers mentioned in the mahazar already prepared. It found to be tallied. Search was made. The accused handed over Rs.3,400/-, for which no explanation was given by him. That money was also recovered. Another Sodium Carbonate solution was prepared, in which the right hand pant pocket portion was dipped. It turned pink. The dress materials were seized in a mahazar, labelled and sealed. They prepared another Sodium Carbonate solution, in which the accused pant right hand pocket portion was dipped. It turned pink. That was collected, labelled and sealed. On enquiry, he disclosed that the accused Balakrishnan, after receiving Rs.500/- from PW2, he retained Rs.200/-. Out of the same, he gave Rs.50/- to the Office Assistant Kannan and Rs.50/- to Manoharan. Manonaran handed over the currency note and his shirt portion was dipped. It also turned pink. It was collected, labelled and sealed. The dress of the accused was also seized in the mahazar. Similarly, Kumar was enquired and he has also stated that he received Rs.50/-. It was recovered under proper mahazar. When the Radha Vaijayanthi Mala was enquired, she did not give any proper reply. He recovered the relevant records from the office. The entire event was reduced into writing, in which all the witnesses and the accused signed. All the four accused were arrested and produced before the court. He submitted the records, material objects to the concerned court.

9.The investigation was taken by PW7 the Inspector of Police. By taking the investigation, he recorded the statement of the accused, submitted the report for chemical examination. After completing the investigation formalities, receiving sanction order and chemical report, he examined the concerned officials. Finally, he filed the final report on 29/06/2009 charge sheeting the accused for the offences punishable under sections 7 and 13(2) r/w 13(1) (d) of the PC Act.

10.PW3 is the official witness, who corroborated PW1 in material particulars.

11.PW4 is the brother of PW2. He corroborated PW2 in material particulars with regard association and events.

12.PW5, as mentioned above, is a witness to the trap proceedings. He signed in the document prepared by the Trap Laying Officer. He was the witness to the entire event,

13.PW6 is the another witness to the trap proceedings. He signed in the document prepared by the Trap Laying Officer.

14.PW7 has spoken about the duties assigned to various persons.

15.PW9 is the Scientific Officer working in FSL, Chennai, who examined the material objects sent to her by the police through court and for chemical examination. She filed a report under Ex.P.19. With that, the prosecution side evidence was over.

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

17.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 him to undergo 2 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 him to undergo 2 years RI and imposed a fine of Rs.1,000/-, in default to undergo 3 months SI and directed the sentences to run concurrently.

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

19.Heard both sides.

20.**__The background facts__**: PW2 is the de-facto complainant. On 09.01.2007, he applied for allotment of house in Tamil Nadu Housing Unit, Ellis Nagar, Madurai and paid the necessary charges. On 11.01.2007, Rs.1,00,000/- was deposited as advance amount. On 29.01.2007, the house bearing No.C.302 was allotted to them. He received a communication to produce necessary documents in the office. So, on 05.03.2007 along with his brother namely PW4 went to the office of the accused. They were asked to come on 07.03.2007. On that date, the accused handed over the allotment order and informed them that for registration of the property, it may take some time. Again in the month of June on 18th day, his brother went to the Office. Brother informed him that the accused demanded Rs.500/- as bribe amount, apart from other legal charges. Again, on 11.06.2007 at about 05.00 p.m, they went to the office of the accused and at that time, again the accused alleged to have demanded the bribe amount. This is the background of the prosecution case. In pursuance of the above said demand, the bribe amount was paid during the trap and accused was arrested.

21.Along with this present appellant, several persons were arrested. PW10 the Trap Laying Officer would say that the appellant herein namely Balakrishnan, Manoharan, Kannan, Radhavaijeyanthimala were arrested on the date of trap. Regarding the involvement of others, it was stated by him that on enquiry with the accused namely the appellant herein, he told that out of the above said bribe amount, Rs.200/- was meant for Radhavaijeyanthimala, Rs.100/- for watchman Manoharan and Office

Assistant Kannan was given Rs.50/- each. So, it is seen that not only the appellant, but several persons were arrested on the date of trap. Now what happened to other persons is a matter for consideration in the later part of the judgment.

22.Now we will go to the defence taken by the appellant. Before the delivery of the document of purchase, the deposit for the EB service connection and inspection charges must be paid by the allottee. It was the usual practice of the Housing Board staff members to pay the EB deposit amount and Inspection Charges out of their own pockets. Later used to collect it from the allottees. According to the appellant. by the usual practice the brother of PW2 at one point of time visited the Housing Board, at that time he was told about the practice. By that way, his brother received Rs.500/- from the appellant as hand loan and deposited. The amount paid by PW2 at the time of trap is the repayment of the loan amount.

23.From the defence taken by the accused, it is seen that recovery of Rs.400/- from this appellant is not denied. With this in mind, we can go to other aspect namely whether this was intended as bribe amount or really repayment of loan amount obtained from the appellant by the de-facto complainant on the earlier occasion for payment of EB deposit, etc. The recovery is not disputed by the appellant. So, naturally, he has to rebut the presumption available under Section 20 of the Prevention of Corruption Act.

24.Similarly, another disturbing feature is the deletion of the co-accused at the time of filing the final report. As mentioned above, it also requires proper consideration.

25.A preliminary point was raised by the appellant regarding the evidentiary value of PW4. PW4 is the brother of PW2. Strong exception was taken by the appellant in introducing PW4 in the case by the prosecution stating that it is totally unfair on the part of the Trap Laying Officer to take or direct PW4 to accompany with PW3 and PW5. What sort of prejudice was caused by this way is to be seen. It has been stated that it is unfair. Now, we will see whether PW4 was introduced by the prosecution to gain any unfair advantage.

26.PW4 would say that on 09.01.2007, the purchase price and registration charges were remitted by them. The balance amount was paid on 11.01.2007. The allotment order was issued on 29.01.2007 in favour of PW2. After that, they approached the accused several times for registration of sale. Finally, on 08.06.2007, they enquired about the registration of the document. They purchased the stamp papers and at the direction of the appellant, on 09.06.2007, he handed over the stamp papers, Rs.200/- for typing charges to the accused. At that time, PW2 did not come along with him; The accused asked him to inform his brother to come to the Office on 11.06.2007 along with bribe amount of Rs.500/-; He in-turn informed PW2 about the demand. On 11.06.2007, both went to the office of the accused. At that time, the demand was repeated. When they replied that they have not brought the money, both were taken to the Superintendent namely Vaijayanthi Mala. Vaijayanthi Mala told them to give Rs.500/- as demanded by the appellant. The appellant reiterated the demand at that time also. The complaint was lodged on 12.06.2007. This is the sequences of events spoken by PW4.

27.Now, we will go to the evidence of PW2 regarding the initial demand. He would say that on 05.03.2007 on getting the intimation, along with PW4, he went to the office of the accused; They were asked to come on 07.03.2007; On that date, the allotment order was issued to him; Later, in the month of June 8th day, PW4 alone went to the office of the accused; Later he informed him that the stamp papers, typing charges of Rs.200/- and Rs.500/- bribe was demanded by the accused.

28.PW2 and PW4 corroborated with each other regarding the above said events. For the first time, in the month of June 8th day, it appears that demand of Rs.500/- as bribe was made by the appellant not directly PW2, but to PW4. As mentioned above, PW4 has not stated any thing about the initial demand on 08.06.2007. So, in view of the above said contradiction, the prosecution has not explained satisfactorily as to the actual demand, that was made by the accused on 08.06.2007. So, we can take that there was no initial demand on 08.06.2007. Only on 09.06.2007, PW4 went to the office of the accused. At that time only, demand of Rs.500/- was made by the accused. So, probably PW2 is giving a wrong date as 08.06.2007 instead of 09.06.2007.

29.Now we will see what happened on 11.06.2007. PW2 would say that on 11.06.2007 at about 05.00 p.m. again they went to the office of the accused. At that time, the demand was reiterated. It is corroborated by PW4. Even with regard to the direction made by the Vaijayanthi Mala, I find absolutely nothing on record to disbelieve the evidence of PW2 and PW4 regarding the demand made on 11.06.2007, though it was not proved that it was made on 09.06.2007. So, he participated in the trap proceedings. Since PW4 was accompanying PW2 right from the beginning, there is nothing wrong for Trap Laying Officer to send PW4 also during the trap.

30.Trap Laying Officer namely PW10 would say that he instructed PW2 to take PW4 also along with them. Even during the course of cross examination, no suggestion was made to him that against the proper procedure to gain report unfair advantage, PW4 was directed to go along with PW2. During the course of cross examination, he would say that PW2 came along with PW4 when lodging the complaint. But neither in the pre-trap arrangement, nor in the Mahazar prepared at the time of trap, PW4 signed as a witness. Hence. the objection is made by the appellant that PW4 was introduced by the prosecution to gain unfair advantage.

31.As mentioned above, the demand made by the appellant on 09.06.2007 stands established. Similarly, the demand made by Vaijayanthi Mala was also spoken by PW2 and PW4.

32.**Now we will go to the trap event**. PW2 would say that as per the instructions, all of them namely PW2, PW3 and PW4 went inside the office of the accused. At that time, watchman Manoharan, Office Assistant Kannan were present. They asked the appellant herein for delivering the sale deed. At that time, the appellant enquired whether they brought the money. Money was accepted by him and put in the right hand pant pocket. As instructed earlier signal was made.

33.He was cross examined by the appellant suggesting that on 11.06.2007 the accused put his signature in the document, handed over to Vaijayanthi Mala. Vaijayanthi Mala only demanded the bribe amount from PW2 by keeping the file in her hands.

34.So, this suggestion indicates that the accused namely the appellant herein did not demand any thing. But, only Vaijayanthi Mala, who was not shown as accused, demanded the money.

35.Now, we will go further keeping this in mind. PW3 the shadow witness would say that at about 4.35 p.m, they went inside the office of the accused. He was standing 10 feet away and watching the events. PW2 spoke something to the appellant and later, took out the money from his pocket and gave to the appellant.

36.So the question which arises for consideration is whether the evidence of PW3 the shadow witness can be relied by the prosecution to show the demand and the acceptance of money by the appellant on the date of trap. As mentioned by him, he was standing 10 feet away from the seat of the appellant. The conversation took place between the appellant and PW2 was not heard by him. But, he witnessed the giving and acceptance of money by the appellant.

37.Now we will go to the evidence of PW4. He would say that the appellant made enquiry regarding the bribe amount of Rs.500/-. At that time, the appellant alleged to have told them that Rs.200/- is meant for him and another Rs.200/- is for Vaijayanthi Mala and the remaining Rs.100/- is for others. PW2 gave the money. The appellant accepted the same, counted and put it in his pocket. So, this is the event spoken by the witness on the date of trap. As mentioned above receiving the money by the appellant is not denied and disputed by him. In the circumstances, it is the duty of the appellant to probabalise his defence that the money was not a bribe amount, but repayment of loan amount borrowed by PW2. For showing the same absolutely, there is no evidence on record.

38.The defence that the staffs in the office of the appellant used to deposit the money for EB connection and other charges from their pockets and used to collect the same from the beneficiaries or allottees later, is completely out of place and cannot be taken into consideration at all. No public servant will indulge in such sort of activities. The evidence available on record is against the case of the appellant himself. Because during the verification of the records, it was found by the Trap Laying Officer that as per Ex.P8 on 07.05.2007 itself the pre-deposit amount for EB connection and other charges were paid. But, there is some contradiction in the prosecution case with regard to this issue. PW2 and PW4 did not say anything about the pre-deposit and other charges apart from the charges remitted by them. No break up figure is available to show the characterization of the charges.

39.Now going back to the deletion of the co-accused, the learned Additional Public Prosecutor was required to produce the entire file to find out on what reason those persons were deleted. But, the learned Additional Public Prosecutor would point out that the recommendation was made by the Director of Vigilance and Anti Corruption Department to the Departmental Head of the other persons to initiate Departmental action. As mentioned above, Trap Laying Officer has admitted that on the date of Trap itself, all the four persons were arrested and remanded to custody and later released on bail. But, the Investigating Officer, who filed the final report thought it fit to delete those persons from the array of the accused without any valid reasons.

40.At this juncture, the learned Additional Public Prosecutor would submit that if the court feels that those persons must also be added as accused, then the power may be exercised by this Court under Section 319 Cr.P.C.. But now it is too late for remanding the matter back to the trial

Court with the direction. Because the occurrence said to have been taken place on 12.06.2007. Now we are in the year 2025. 18 years lapsed. After lapse of 18 years, it may not be proper on the part of the court to remand the matter to the trial Court with a direction to add other persons as accused and proceed *de nova*. The prosecution ought to have taken the above said step before the trial Court itself. So, the request made by the learned Additional Public Prosecutor cannot be considered.

41.Finally, an arguments advanced on the side of the appellant, as mentioned above, by pointing out the cross examination made to PW2. It was submitted by the counsel for the appellant that job was already over; so far as this appellant is concerned, the file was handed over to Vaijayanthi-Mala.; Nothing more has to be done by the appellant. So absolutely, there was no occasion for demand and acceptance of any bribe amount.

42.But, as mentioned above, this argument is not acceptable for the simple reason that for finalization of the process demand of Rs.500/- was made by this appellant for himself and others, as the evidence of PW2 and PW4 on that aspect as no inconsistency. It is submitted that the averments made in the complaint given by PW2 and PW4 does not tally. We can not expect that every minute details must be mentioned in the complaint.

43.It was submitted that there was two complaints. Only one is before the court and another is suppressed. But, there is no such indication that PW2 gave two complaints and one is suppressed. There is nothing on record support the case of the appellant on that aspect. So, the over all assessment of the evidence on record, it has been established that the appellant herein demanded and accepted the bribe amount for himself and others. Since other other people like Vaijayanthi Mala and others are not arrayed as accused, the appellant cannot take advantage of the failure on the part of the prosecution.

44.As mentioned above, the final report filing Officer has not given any reason for dropping the other accused. No advantage can be gained by the appellant. So, this ground is not available to him and accordingly, I find that the conviction rendered by the trial Court requires no interference. So far as the sentence is concerned, considering the facts and circumstances as well as the manner in which the above said occurrence said to have been committed, the sentence period alone is reduced **to one year RI for both offences.**

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

25.02.2025

NCC: Yes/No
Index:Yes/No
Internet:Yes/No
TM
To

1.The Special Judge for Prevention of Corruption Act Cases, Madurai.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Madurai.
Crime No.4 of 2007

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

G.ILANGOVAN, J

TM

Crl.A.(MD).No.63 of 2018

25 .02.2025