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Cr1.A(MD)No.465 of 2019



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	17/10/2024
Date of Pronounced	10/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Cr1.A(MD)No.465 of 2019

S.S.Porchelian : Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli District.
(Crime No.1 of 2019)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence passed in Special Case No.04 of 2016 by the Special Court of Trial of Cases under Prevention of Corruption Act, Tirunelveli, dated 25/09/2019 and pass such further or other orders.

For Appellant : Mr.T.Lenin Kumar

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



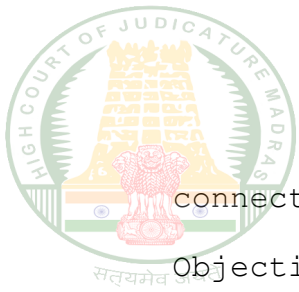
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This Criminal Appeal is filed against the conviction and sentence passed in Special Case No.04 of 2016 by the Special Court of Trial of Cases under Prevention of Corruption Act, Tirunelveli, dated 25/09/2019.

2.The case of the prosecution in brief:-

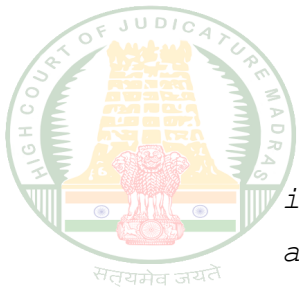
The accused was working as Junior Engineer, PWD/WRO, Chittar Basin Section of Kadayanallur Taluk, Tirunelveli between 11/02/2015 and 11/05/2015. The de-facto complainant was constructing a Cashewnut factory at Mangammal Salai. The President of Sernthamaram Panchayat took steps to build a culvert on PWD supply channel leading to Kulesekaramangalamkulam. Along with general public, the de-facto complainant was also a beneficiary of the culvert. For construction of the culvert across a water course under the control of PWD, sanction of the Superintending Engineer is to be obtained. Before according sanction spot inspection report of the concerned Assistant Engineer/Junior Engineer would be obtained. The accused was the Officer to inspect the spot and submit report. De-facto complainant met the accused on 08/05/2015 at 13.15 pm at the Office of the Executive Engineer, PWD, Chittar Basin, Sub Division, Tenkasi, Tirunelveli District in



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connection with the recommendation and issuance of 'No Objection Certificate' to construct a culvert at Mangammal Salai Odai across the PWD water channel leading to Kulasekharamangalamkulam between Sernthamaram village and Veerasingamani village. At that time, the accused demanded a sum of Rs.1,50,000/- as bribe amount for issuance of certificate. Later it was reduced to Rs.1,40,000/-. Based upon the complaint, trap was laid. Case in Crime No.1 of 2015 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, filed final report. It was taken on file by the Special Judge for Trial of cases under Prevention of Corruption Act, Tirunelveli in Special Case No. 04 of 2016 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, the following charges were framed against the accused persons:-

(1)When the de-facto complainant met the accused on 11/05/2015 asked about the recommendation and issuance of No Objection Certificate in connection with the construction of culvert at Mangammal Salai Odai across the PWD irrigation water channel, leading to Kulasekhara Mangalamkulam between Sernthamaram village and Veerasigmani village, the accused reiterated his earlier demand of bribe of Rs.50,000/- as first



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instalment as gratification and thereby, the accused committed an offence punishable under section 7 of the Prevention of Corruption Act, 1988; and

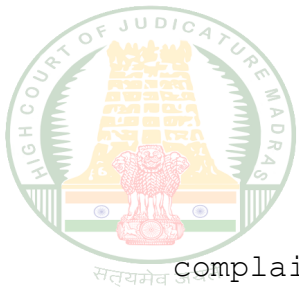
(2) In pursuance of the same transaction, the accused by using his position as a public servant obtained Rs.50,000/- as pecuniary advantage for himself from the complainant and thereby the accused committed an offence punishable under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

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

4.During the trial process, on the side of the prosecution, 17 witnesses have been examined and 49 documents marked. Apart from that, MO1 to MO4 marked. On the side of the accused, 3 witnesses were examined and 3 documents were marked.

5.The de-facto complainant namely one Amul Raj Pandian died before commencement of the trial. So, he could not be examined as a witness.

6.Narration can be started from the evidence of the Trap Laying Officer namely PW10 Kandasamy.



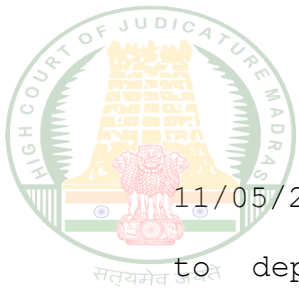
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7. On 09/05/2015 at about 12.30 pm, the de-facto complainant namely Amal Raj Pandian appeared before him and lodged a written complaint. Wherein he has stated that he approached the accused for issuing 'No Objection Certificate' for putting up over bridge in Kulasekharmangalam Kanmai area. At that time, the accused S.S.Porchelian demanded Rs.1,50,000/- as bribe amount for making recommendation after completing the field inspection. The de-facto complainant expressed his inability. The accused asked him to give Rs.50,000/- in advance and the balance amount later. A preliminary enquiry was taken on 09/05/2015. On 11/05/2015 at about 08.15 am, Amal Raj Pandian appeared before him and he asked Amal Raj Pandian to record the statement of the accused in voice recorder and return to him. One Seetharaman was working in the Department was asked to assist Amal Raj Pandian in recording. On 11/05/2015 at about 12.00 noon, he returned to the office, audio record was handed over to him and he listen to it. Came to know that the accused demanded the bribe amount. His antecedents were enquired. He found that the accused was not having good conduct. The case was registered on 11/05/2015. He prepared FIR, submitted the original to the court and copies to the higher officials.

8. Further investigation was handed over to PW12.

He recorded the statement of the de-facto complainant on

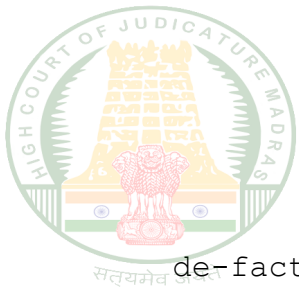


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11/05/2015 at about 02.10 pm. He requested the Government to depute two responsible officials. At his request,

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Muthukrishnan and Parvathiraj appeared before him. He introduced the official witnesses to Amal Raj Pandian. He gave copies of FIR to the official witnesses and asked them to read the same; instructed them to ensure the genuineness of the FIR with the de-facto complainant. He asked Amal Raj Pandian whether he had brought Rs.50,000/- bribe amount demanded by the accused. Amal Raj Pandian produced the currency notes. As per his instructions, the official witness Parvathiraj counted the currency notes produced consisting of 50 notes of Rs.1,000/- denomination. He instructed Theivakkan Raja to prepare sodium carbonate solution. He prepared it. Official witness Parvathiraj was directed to dip his right and left hand fingers in the said solution. There was no colour change. After that as per her instruction treated the currency notes with phenolphthalein powder. Above Said Parvathiraj counted the notes once again and placed it in the table. He dipped his hands in the sodium carbonate solution. The solution turned pink. PW12 explained them about the importance of the phenolphthalein test. He informed the de-facto complainant to meet the accused on the same day in his office at Tenkasi and if accused demand money and accept the same, he was directed to give signal. PW12 instructed PW2 to accompany the de-facto complainant and watch the event.

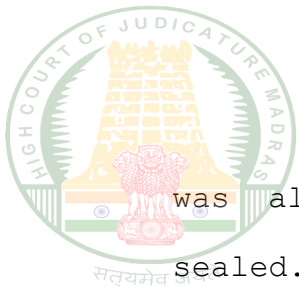


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9.At about 03.10 am, on 11/05/2015 along with the de-facto complainant and other witnesses, a team of police went to the office of the accused. They were hiding in a nearby area and the de-facto complainant Amal Raj Pandian and the official witness Muthukrishnan went to the office of the accused.

10.The further event is spoken by the official witness namely PW2-Muthukrishnan. They went inside the office of the accused. When enquiry was made by the de-facto complainant about the certificate, the accused demanded whether he brought money of Rs.1,50,000/- demanded by him. The de-facto complainant gave Rs.50,000/-. The accused received the same, counted in his own hands and put the same in his pant pocket. They came outside of the office of the accused and the de-facto complainant has shown signal as instructed by the Trap Laying Officer.

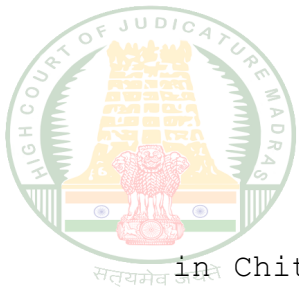
11.On getting the signal from the de-facto complainant, the Trap Laying Officer and other team of police went inside the office of the accused. The de-facto complainant identified the accused and narrated the events. He was sent out of the office. Sodium carbonate solution was prepared and the accused was directed to dip his hands. It turned pink. It was collected, labeled and sealed. It was repeated his left hand also. It also turned pink. It



was also collected in a separate bottle, labeled and sealed. He made enquiry about the money. The accused handed over the money from his pant pocket. Notes were compared with that of the mahazar. It was found to be tallied. The money was recovered under mahazar in which the accused and the witnesses signed. The pant pocket was dipped in another solution. It turned pink. It was recovered for which separate mahazar was prepared. The accused was arrested and remanded to custody.

12.PW13 went to the office of the accused. On hearing the above said trap, he arrested the accused. On that date, took up the investigation and recorded the statement of the witnesses. He made arrangement for submitting the material objects for chemical examination. The recorded the statement of other witnesses.

13.The further investigation was undertaken by the DSP-Mathialagan namely PW17. He took up the investigation on 01/01/2016 and enquired the witnesses who were already examined by his predecessor. They repeated the very same, he did not record the statement separately. He obtained consent namely sanction letter from PW1. There was some mistake in Ex.P1. So, it was corrected under Ex.P2. He again recorded the statement of the sanctioning authority. After completing the investigation, he filed a final report on 13/10/2016.



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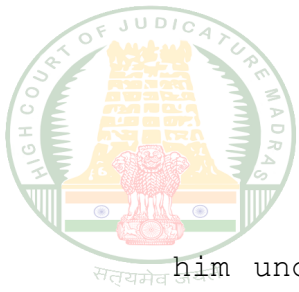
14.PW3 was working as Assistant Executive Engineer in Chittar Sub Division. He has spoken about the sanction obtained for construction. He has also spoken the procedure to be adopted.

15.PW4 was working as Assistant Engineer in Mangammal Salai village Union Office. He has spoken about the over-bridge work undertaken in that area and the estimate and etc. facts.

16.PW5 was working as Record Clerk in that office and spoken about the papers received by him for the said work, so also PW6, PW7 and PW8 who was working as Draftsmen.

17.PW9 was the Village President of Sernthamaram Village between 2011 and 2016. He has spoken about the request made by the villagers, resolution passed by the Panchayat for construction of overhead bridge.

18.PW14 has spoken about the office records submitted by him as per the request made by the Inspector of Police, on 11/05/2015 at about 10.30 am.



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19.PW16 has spoken about the certificate issued by him under section 65(3) of the Indian Evidence Act. Others are not the material witnesses.

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.At the conclusion of the trial process, the trial court convicted the accused, sentenced him to undergo simple imprisonment for a period of 4 years and to pay a fine of Rs.10,000/- in default to undergo 6 months SI for the offence under section 7 of the PC ACT and sentenced to undergo 4 years SI and to pay a fine of Rs.10,000/- in default to undergo 6 months SI for the offence under section 13(2) r/w 13(1)(d) of the PC Act and directed the sentences to run concurrently.

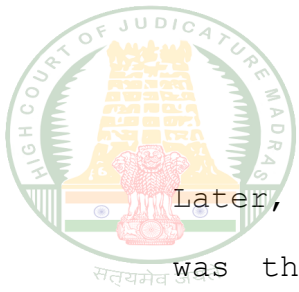
22.Against which, this criminal appeal is preferred by the appellant.

23.Heard both sides.



The background facts:-

24. According to the prosecution, PW9 was the President of the Village Panchayat called 'Sernthamaram' between 2011 and 2016. The bridge connecting Sernthamaram to Veerasigamani called 'Mangammal Salai' got damaged. Because of the damage of the bridge, farmers in the nearby were greatly affected. On 26/01/2005, a Panchayat Council meeting was convened, wherein a resolution was passed. By that resolution, it was proposed to construct a new bridge. The resolution was marked on the side of the prosecution as Ex.P34. That resolution was conducted and passed on 25/02/2015. He made a request to the Block Development Officer attached to Mangammal Salai Village under Ex.P14. Along with the request, estimate prepared by the Engineer to the Union was also attached. It was estimated at Rs. 2,70,000/-. Since the channel or vaikal comes under the jurisdiction of PWD, he came to know that their clearance or consent is also required. So, he made a request in this regard under Ex.P26. For about sometime, there was no response from the Government Officials. But the de-facto complainant namely Amal Raj Pandian constructed a factory near the channel. He made enquiry about the proposed bridge. And in turn PW9 told the de-facto complainant, who is now dead about the proposal. So, Amal Raj Pandian approached the accused herein. At that time, the accused alleged to have demanded the bribe amount of Rs.1,50,000/-.



Later, the bribe amount was reduced to Rs.1,40,000/-. That was the information to the de-facto complainant to him.

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This is the background of the prosecution case.

Now coming to the defence:-

25. According to the defence with regard to the construction of the bridge, it was contended that the de-facto complainant namely Amal Raj Pandian is noway connected with the issue. Amal Raj Pandian was used by his enemies for the purpose of foisting such a false case.

26. It was suggested to PW9 that no such factory construction was made in the nearby area. Amal Raj Pandian was indeed a real estate broker and he was also in the business of arranging loans for Wind-mill companies. By joining hands with the Wind-mill companies, this false case was registered with the connivance of PW9 and the deceased Amal Raj Pandian.

27. The next ground of defence is that the Village Panchayat President with the connivance of a private contractor started work on the bridge without the permission from the concerned authorities. On 07/04/2015, the construction started, which was objected by the farmers nearby area. Being the Assistant Engineer responsible for the daily visit to the place under the control of PWD,



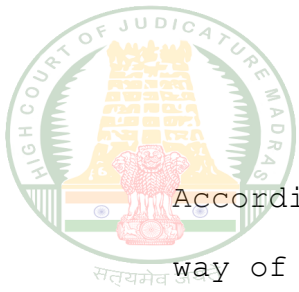
stopped the work and that was the enmity, which caused launching of the false complaint and for that purpose, the defence relied upon the defence side evidence namely DW3.

28. According to DW3, on 07/04/2015, he by chance, met the accused in Seranthamaram village bus stop. The accused requested him to take him to the channel area where the illegal construction was made. So, DW3 dropped him in that area in his two wheeler and he witnessed to the effect that the construction was made illegally and the accused stopped the construction.

29. Evidencing the same, the accused took photographs and informed the same to the higher authorities. Because of his intervention, the work was stopped. This is the evidence of DW3 which is heavily relied upon by the defence.

30. Another supporting evidence, according to the defence, is the evidence of DW1 who was working as Junior Assistant in the Chittar Division of PWD.

31. He produced the accused progress report between 01/04/2015 and 11/05/2005. It was marked as Ex.D1. According to him, the report was submitted on 20/06/2015 by the accused, received in his office on 28/06/2015.



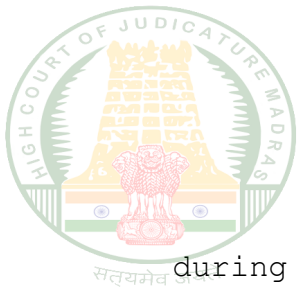
According to the defence, his case has been probablised by way of submitting the progress report.

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32. Another evidence let in by the defence is DW2. He gave information in pursuance of the request made by an Advocate called 'Sivakumar' with regard to the illegal and unauthorized construction in Kulasekaramangalam channel area. According to him, as per the available records with the Department, in April 2015 month a bridge was constructed without the permission by the Panchayat in Mangammal Salai area.

33. By pointing out this evidence, it is contended on the part of the defence that for the act, the accused for having performed his duty in a lawful manner, he was victimized.

34. The other ground of defence taken by the accused during the course of the trial with regard to the recovery of money from him is that on the date of the trap, the deceased de-facto complainant handed over Rs.50,000/- to him stating that he has to attend the hospital immediately and for that purpose, he may keep the money in temporary custody; On that account only, he received the money from the de-facto complainant and that was the reason for recovery.



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35.Now in the factual background brought on record during the trial by both sides, we will go the main issue now.

36.Regarding the initial demand that allegedly made by the accused to the deceased de-facto complainant, there is no evidence on record, except the evidence spoken by PW9, the President of the Village Panchayat. Wherein he has stated that as mentioned above, the de-facto complainant approached the accused for the purpose of issuing No Objection Certificate. At that time, the accused alleged to have demanded Rs.1,50,000/- as bribe amount. Later, it was reduced to Rs.50,000/- as initial demand and balance amount of Rs.90,000/- must be paid after that. But regarding this allegation, PW9 has stated nothing about the date on which the deceased informed him about the demand and the place also. This was pointed out by the learned counsel on record appearing for the appellant at the time of argument.

37.Now let us go to the complaint given by the de-facto complainant. FIR which was registered on the basis of the complaint given by the de-facto complaint is marked as Ex.P38. The complaint is marked as Ex.P37. In the complaint, the de-facto complainant has stated that in pursuance of the petition sent by the Village President on 09/04/2015 he went to the office of the accused and

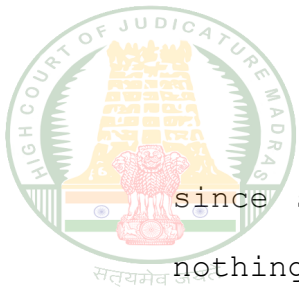


contacted him on 05/05/2015. At that time, he demanded Rs.1,50,000/- as bribe amount. He expressed his inability to pay the huge amount. It was reduced Rs.1,40,000/-. He demanded the initial amount of Rs.50,000/-. Balance amount after arranging. But for that initial demand as mentioned above was not established probably due to the death of the de-facto complainant. But whether the allegation made by the de-facto complainant is true has to be decided by taking into account the subsequent events.

38.Now we will go to the trap event.

39.As mentioned above, the accused has not denied the fact that Rs.50,000/- was recovered from him. His defence was that it was given by the deceased as temporary custody.

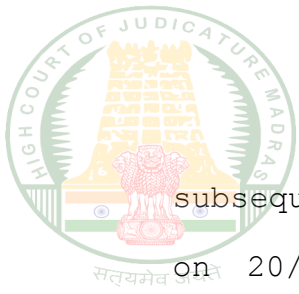
40.Before we go into the reliability of the defence taken by the accused, we will go to the trap event. PW2 is the shadow witness. He would say that he accompanied the de-facto complainant to the office of the accused as per the trap arrangement. At that time, the accused asked the de-facto complainant whether he brought money of Rs. 1,50,000/- demanded by him. The de-facto complainant handed over the money. The accused received the same in his right hand, put it in his pant pocket. This is the tainted money,



since sodium carbonate solution test turned positive. So, nothing was brought on record to support the case of the defence by way of cross examination. It was simply suggested that explanation was offered by the accused was not recorded by the Trap Laying Officer. PW2 denied the suggestion made to him. The accused gave the explanation stating that PW2 gave the money as temporary custody.

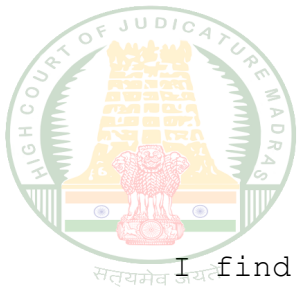
41.Now from the evidence of PW2, demand on the date of the trap itself is established by the prosecution. So, *prima facie* the prosecution has established the demand and acceptance. Now whether the accused has probabalised his defence in view of the evidence on record brought by him can be taken up.

42.Regarding enmity, the evidence of DW3 is completely without any proof. Whether actually the bridge was constructed by the Village Panchayat is not clear on record. Even if we see that un-authorized bridge construction was made by the Village President, absolutely there is no evidence on record to show that the fact was immediately brought to the notice of the higher officials. It is in evidence of DW3 that photographs of the unauthorised bridge was taken by the accused. To whom it was submitted, absolutely there is no evidence on record. The progress report relied by the accused under Ex.D1 is



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subsequent to the date of the trap. It was submitted only on 20/06/2005 that was the received by the office on 28/06/2005. Since it has been prepared and submitted subsequent to the trap, no reliability can be attached to this report. Even in the report, absolutely there is no indication with regard to the alleged illegal construction of the bridge by the Village Panchayat President. If really such a bridge was constructed illegally, considering the urgency of the issue, a special report ought to have been submitted by the accused immediately to the higher authorities. Absolutely, there was no urgent report. The RTI information furnished by DW2 cannot have any impact upon the allegation made against the accused. It is in evidence to the effect that this accused was directed to attend the duty of preparing the report. So, against that, absolutely there is no evidence on record on the side of the accused. So, the defence that he was not the Authorised Officer to attend the work is completely out of place and cannot be accepted. So, the recovery of tainted money from the accused coupled with the demand made on the date of the trap itself will indicate that the earlier demand made by the accused to the deceased de-facto complainant. None of the arguments advanced by the appellant are convincing, capable of upsetting the findings recorded by the trial court.



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43. So I find no merit in this appeal. Accordingly,
I find no reason to interfere in the judgment of sentence
also considering the huge money involved.

44. In the result, this criminal appeal is
dismissed, confirming the judgment of conviction and
sentence passed by the trial court.

10/01/2025

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To,

1. The Special Judge,
Special Court for Trial of Cases under
Prevention of Corruption Act,
Tirunelveli District.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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