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Crl.A(MD)Nos.294, 302 and 309 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	19/10/2024
Date of Pronounced	08/01/2025

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)Nos.294, 302 and 309 of 2018

(1)Crl.A(MD)No.294 of 2018:-

R.Sudhakaran : Appellant/Sole Accused

Vs.

The State Rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Virudhunagar.
(Crime No.6 of 2008)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the Special Court for trying the Cases under the Prevention of Corruption Act and Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur in Special CC No.36 of 2014 vide his judgment dated 26/06/2018 and set aside the same and consequently acquit the appellant honourably.

For Appellant : Mr.R.Anand

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

(2)Crl.A(MD)No.302 of 2018:-

R.Chellapandian : Appellant/Accused



Crl.A(MD)Nos.294, 302 and 309 of 2018

Vs.

State By
The Deputy Superintendant of Police,
Vigilance & Anti Corruption Wing,
Virudhunagar.
(Crime No.6 of 2008)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment passed in Special Case No.38 of 2014 (Old Special Case No.21 of 2012), dated 26/06/2018 on the file of the Special Court for Trial of Prevention of Corruption Act cases cum Chief Judicial Magistrate's Court, Virudhunagar District at Srivilliputhur.

For Appellant : Mr.N.Sankar Ganesh

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

(3)Crl.A(MD)No.309 of 2018:-

M.Murugeswaran : Appellant/Single Accused

Vs.

The State Rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Virudhungar.
(Crime No.6 of 2008)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the Special Court for trying the Cases under the Prevention of Corruption Act cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur in Special CC No.37 of 2014 vide



his judgment dated 26/06/2018 and set aside the same and consequently acquit the appellant honourably.

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J U D G M E N T

All the criminal appeals are filed against the judgment of conviction and sentence passed by the Special Court for trying the Cases under the Prevention of Corruption Act cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, dated 26/06/2018 in CC Nos.36 to and 38 of 2014.

2.The case of the prosecution in brief:-

On 19/09/2008 between 12.30 to 04.30 pm, the accused R.Sudhakaran (Rs.1,440/-), accused R.Chellapandian (Rs.11,430/-) and the accused M.Murugeswaran (Rs.2,700/-) were found in possession at the office premises of the Motor Vehicle Inspector, Sivakasi, Virudhunagar District with an intention to bribe the officials of the above office using their personal influence. Based upon the complaint, investigation was undertaken and final report was filed before the Special Judge-Cum-Chief Judicial Magistrate, Virudhunagar District @ Srivilliputhur, which took cognizance in Special CC Nos.36 to 38 of 2014 and framed the following charges against the accused persons:-



(1)The first charge is that the appellant On 19/09/2008 between 12.30 to 04.30 pm, the accused R.Sudhakaran (Rs.1,440/-), accused R.Chellapandian (Rs.11,430/-) and the accused M.Murugeswaran (Rs.2,700/-) were found in possession at the office premises of the Motor Vehicle Inspector, Sivakasi, Virudhunagar District and thereby, they have committed an offence punishable under [Section 8](#) of the Prevention of Corruption Act, 1988; and

(2)In pursuance of the above said occurrence, all the accused were found in possession of the bribe amount at the office premises of the Motor Vehicle Inspector, Sivakasi, Virudhunagar District with an intention to bribe the officials of the above office using their personal influence and thereby, they have committed an offence punishable under section 9 of the Prevention of Corruption Act.

3.After framing the above said charges, the appellants were questioned and they denied the charges.

4.For proving the above said charges, the prosecution examined 10 witnesses and marked 20 documents.



On the side of the accused namely, the appellant herein, one Subash was examined as D.W.1 and 1 document was marked and 5 Material Objects were exhibited by the prosecution.

5.The facts, as narrated through the examination of the witnesses, are as follows:-

Thiru.Mahendran was working as Deputy Superintendant of Police attached to Vigilance and Anti-Corruption Department, Virudhunagar in 2008. On 19/08/2008 at about 12.30 noon, he along with a team of police people on getting the information, conducted inspection and raid in Sivakasi RTO Office. The surprise raid took place till 04.30 on that date. They prepared surprise raid report. At the time of the raid, they enquired the accused R.Chellapandian (Crl.A(MD)No.302 of 2018), M.Murugeswaran (Crl.A(MD)No.309 of 2018 and R.Sudhakaran (Crl.A(MD)No.294 of 2018) who were found in possession of money. They did not give any proper explanation for possessing the money and they told that they got money for bribing the officials. The accused R.Chellapandian was conducting a driving training school called 'Sree Muthumariamman' in Satchiapuram and he further stated that to get the driving licence for one Vijayakumar, was in possession of Rs.11,430/-. He further disclosed that he collected money from various persons for bribing the officials. The



statement was reduced into writing. In the statement, the witnesses and the accused signed. R.Chellanandian was arrested and the money was recovered from him was marked as MO2. Similarly from R.Sudhakaran, they recovered Rs.1,440/- and from M.Murugeswaran, Rs.2,700/-. Apart from that, during the search made in the office, they found Rs.54/- in excess. Apart from that, they have also recovered Rs. 1,565/- some unclaimed amount on the back side of the office. That is marked as MO3.

6.He recovered the relevant registers from the office and verified the records, vehicles and cash in hand and the remittance challan. He returned to the office and registered the case in crime No.6 of 2008 to 8 of 2008 and prepared FIRs and submitted the original records to the concerned court and copies to the higher officials and recorded the statement of the witnesses. In the meantime, he was transferred. The further investigation was undertaken by PW18-Kulothungapandian. He recorded the statement of the further witnesses. He handed over the file to the successor namely PW19 Tmt.Shyamala Devi.

7.**PW19**-Tmt.Shyamala Devi took up the further investigation and after completing her further investigation, filed final report on 02/02/2012 against the accused R.Chellapandian under sections 8 and 9 of the Prevention of Corruption Act, 1988.



8.PW1-Gosangarajan, PW2-Mohan Raj, PW3-Ganesh Dass were working in the RTO office and they have stated with regard to the surprise raid. PW4-Mahadevan, PW5-Ilango-, PW6-Kannan, PW7-Maduraikesari, PW8-Athmanathan, PW9-Venkatraman, PW10-Kuppusamy, PW11-Rajasekaran, PW12-Shanmugakani, PW13-Marisamy and PW14-Vijayakumar were working during the time in the office of the RTO office, Sivakasi. They have also spoken about the raid, recovery of money and etc. facts.

9.**PW15**-Kumaresan went to the RTO office, Sivakasi for getting or for applying driving licence, etc.

10.**PW16**-Vijayakumar has spoken about the money paid by him to the accused R.Chellapandian for getting licence. In other two cases namely CC Nos.36 and 37 of 2014, the place of occurrence and the witnesses are one and the same and the charges are also of similar in nature, even though final reports were filed and trial conducted separately.

11.After completing the formalities of investigation, final reports were filed by the Investigating Officer. After completing the prosecution side witness, the accused were put on 313 [Cr.P.C](#) question. They denied the allegation. On their side, as mentioned



above, one witness was examined and 12 documents were marked.

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12.After considering the evidence, both oral and documentary, all the three persons were found guilty for the offences under section 8 of the Prevention of Corruption Act and sentenced them to undergo 1 year RI and to pay a fine of Rs.5,000/- each, in default to undergo 3 months SI and further convicted them under section 9 of the Prevention of Corruption Act and sentenced them to undergo 1 year RI and to pay a fine of Rs.5,000/- each, in default to undergo 3 months SI and directed to run the sentences concurrently.

13.Against which, these criminal appeals were preferred by the appellants.

14.Heard both sides.

15.All the three cases arise out of the surprise raid conducted by the Vigilance and Anti Corruption Department officials on 19/09/2008 between 12.30 pm and 04.30 pm in the Motor Vehicles Inspector's office, Sivakasi. Even though separate cases have been registered in Crime No.21, 22 and 23 of 2012, since it is the same occurrence, out of the offence said to have been committed



in the very same occurrence of transaction, a common judgment is pronounced in order to avoid confusion.

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16.As stated in the preamble portion in all these matters, it all started *suo motu* registration of the FIR by the surprise inspection or riding, comprising the Inspector Gosangaraman, Mohan Raj and Ganeshdass. The DSP Mahendran was also the witness to the surprise raid and inspection.

17.We will straightaway go to the evidence of PW17 Mahendran. According to him, the accused Chellapandian, Sudhakaran, Murugeswaran came out of the office; They were enquired; found in possession of money as detailed in the preamble portion. They did not give any proper explanation for having the money. But disclosed that they brought the money for the purpose of bribing the officials in the RTO office. According to him, the accused Chellapandian disclosed that after remitting the legal fee, he was found in possession of Rs.11,430/-. That amount, according to the prosecution, was intended to bribe the officials. The statement of Chellapandian is marked as Ex.P29. The currency recovery made from his was marked as Ex.MO2 series. This is pertaining to CC No.21 of 2019.

18.The accused Sudhakaran was also found in possession of Rs.1,440/-. According to him, he brought the



money for the purpose of bribing RTO officials. The currency note recovered from Sudharkaran was marked as M02 and the statement given by the accused Sudhakaran was marked as Ex.P32. This is pertaining to CC No.22 of 2019.

19.Regarding CC No.23 of 2019, the accused is Murugeswaran. As per the evidence of Mahendran, Rs.2,700/- was in the possession Murugeswaran. The statement given by the accused is marked as Ex.P32.

20.Now we will go to the evidence of the raiding party Inspectors. PW1 Gosangaraman would corroborate with Negendran with regard to raid event.

21.First, we will concentrate mainly upon the charges framed against the accused persons. We will straightway go to the aspects spoken by PW1 regarding the seizure of money, mismatching of payment in the RTO office, etc.

22.Against the accused, he would say that all the accused persons have disclosed that they are conducting driving school and used to collect not only the licence charges from the clients, but also money for the purpose of bribing the RTO Officials for doing their official duty.



23.Now the question, which arises for consideration is whether the marking of the statement alleged to have been given by the accused before the raiding team is legally permissible one.

24.We can straightaway go to section 25 of the Indian Evidence Act, which is extracted hereunder:-

"25.Confession to police officer not to be proved.-No confession made to a police officer shall be proved against a person accused of any offence."

25.Any statement given to the police official is not permissible in evidence. How the trial court permitted the prosecution to mark that document is not properly explained. More-over, the accused statement given to the Police Officer in whatever form cannot be marked and proved against the accused. The only exception is section 27 of the Indian Evidence Act. Whether the statement of the accused will come under the exception will be taken up later. *Prima facie*, it indices that in all the matters, the trial court has committed this error or mistake which is illegal also in marking the statement of the accused persons given before the Police Officer. This is the foundation case of the accused.



26.Now, according to the prosecution, based upon the disclosure statement only, the money have been recovered which were intended to be used for bribing the officials.

27.So, in all the matters, the accused are charged under sections 8 and 9 of the Prevention of Corruption Act.

28.Section 8 of the Act reads as under:-

"8.Offence relating to bribing of a public servant.(1)Any person who gives or promises to give an undue advantage to another person or persons, with intention-

*(i)to induce a public servant to perform improperly a public duty; or
(ii)to reward such public servant for the improper performance of public duty;
shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:*

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority



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or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine."

29. Section 9 of the Act reads as under:-

"9. Offence relating to bribing a public servant by a commercial organisation. (1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending-

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation: Provided that it shall be a defence for the commercial organisation to prove that it had in



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place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of section 8 and this section,- (a) "commercial organisation" means-

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed



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outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.-The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.-Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.



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Explanation 3.-If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) the offence under sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations."

30. In this case, the judgment of the Hon'ble Supreme Court reported in **Babji Vs. State of Andhra Pradesh (2018)17 SCC 732** requires appreciation. The fact in that case is that one employee attached to the Indian Airlines advised the complainant to approach the non Government Servant for purchasing air ticket out of turn. A1 alleged



to have informed the complainant that he can arrange the ticket, demanded Rs.2,100/-. The case was registered against both the accused. The accused was charge sheeted for the offence under section 8 of the Prevention of Corruption Act. The relevant portion can be extracted herein:-

"5.In order to establish the offence under Section 8 of the Prevention of Corruption Act it must be proved:

(i)That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone;

(ii)For himself or for some other person;

(iii)Any gratification whatever;

(iv)As a motive or reward for inducing by corrupt or illegal means any 'public servant' to do or forbear to do any official act or to show favour or render any service to any of the persons specified in the section.



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6. In order to constitute an offence under [Section 8](#) of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under [Section 8](#) of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as



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confirmation of the seat in the Indian Airlines, there may be persons in the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4, to induce a public servant to get the confirmation of the ticket, the conviction of the appellant under [Section 8](#) of the PC Act cannot be sustained. In the result the appeal is allowed and the appellant is acquitted."

31. Reading of the extracted portion of the Hon'ble Supreme Court judgement shows that the prosecution must establish by convincing evidence that the amount was received from the public for the purpose of bribing public servant for doing the legal act.

32. So, in this context, now we will go to the evidence of raiding team comprising PW1 and the Deputy Superintendent of Police, Mahendran.



33. Reading of the evidence, as mentioned above, has shown that the accused persons were found in possession of money in excess of the legal charges paid to the Department for the official duty.

34. Mere possession of money in excess of the legal charges will not attract any penal offence on its own. So, if at all, as mentioned above, the prosecution can sustain the charges only if it is able to establish that the accused attempted to bribe the employees of the RTO office.

35. In this context only, the Hon'ble Supreme Court judgment requires consideration. Wherein it has been stated that the prosecution must specifically establish to whom the money was intended or whether any attempt was made by the accused to bribe a particular officer. Absolutely, nothing is available on record to show the same.

36. In this context, as mentioned above, mere statement of the accused cannot be used against them. Even if we say that the disclosure statement of the accused will come under section 27 of the Indian Evidence Act, then the prosecution must establish what was the fact discovered in pursuance of the statement of the accused. As mentioned above, the prosecution case is based upon the vagueness. Even in the charges, it is not specifically mentioned to whom the bribe was intended to be given.



37.No doubt that some mismatching of account and excess money were found out during the course of the surprise raid. But for that purpose, the officials ought to have been proceeded in accordance with law. But what happened after the above said raid to the RTO officials is not clear on record.

38.In this context, we will go to the evidence of PW1. He has stated that whether any verification or confirmation was made regarding the over possession of the money. He has stated that he made all the verification. His vernacular portion of the evidence may be extracted herein for better appreciation.

“இந்த எதிரிகளைத் தவிர மற்ற 5
நபர்கள் வைத்திருந்த கையிருப்புத்தொகைகளை
உண்மையில் அவர்கள் சொன்ன
காரணங்களுக்காகத்தான் வைத்திருந்தார்கள்
என்பதை அப்போது வேறு வகையில்
உறுதிப்படுத்தினீர்களா என்றால் உறுதி
செய்தோம்.”

39.Similarly, PW2 has also stated that no public was examined by the raiding team to show that the money recovered from the accused were given by any one of them for the purpose of bribing the officials. Mahendran, DSP, during the course of the trial has stated that no case was



registered against the officials of the RTO office on that date. All the officials were cited as witness in all the cases.

40. So from the evidence of the official witnesses namely the team comprised in the raid does not prima facie indicate the ingredients of the offence under section 8 of the Prevention of Corruption Act.

41. It is seen that on mere assumption or presumption as the case may be, the case has been registered against all the three persons. He has suspected every person. It will not partake character of proof. As mentioned above, on mere suspicion under general assumption that all the driving school owners are engaged in collecting money from the public or clients as the case may be, over and above said legal charges for the purpose of getting the licence in a short cut method, it appears that the case has been registered.

42. As mentioned above, if at all only suspicion can be raised and not the legal proof. As indicated by the Hon'ble Supreme Court in the case, without going into the other aspects, this itself is sufficient enough to set aside the judgment of conviction and sentence passed by the trial court. It appears that trial court has carried away



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by the mere recovery of money and the statement recorded during the course of the raid. As mentioned above, it is not legal.

43.So, for the reasons stated above, the judgment of conviction and sentence passed by the trial court against the appellant are liable to be set aside.

44.In the result, all the criminal appeals are **allowed**. The impugned judgment of conviction and sentence passed by the trial court are set aside. The Accused are acquitted from the charges levelled against them. The bail bond if any, executed by the Accused shall stand discharged. The fine amount if any paid by the Accused shall be refunded to them.

08/01/2025

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To,

- 1.The Special Judge,
Special Court for Trial of cases
under the Prevention of Corruption Act-cum-
Chief Judicial Magistrate,
Virudhunagar District @ Srivilliputhur.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Virudhunagar.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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