BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/10/2024
Date of Pronounced	28/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.500 of 2019

R.S.Marimuthu : Appellant/Sole Accused

Vs.

State through
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Nagercoil, Kanyakumari District.
(In Crime No.5 of 2011) : Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 27 of the Prevention of Corruption Act r/w 374(2) of the Criminal Procedure Code, against the judgment of conviction and sentence pronounced, on 15/10/2019 by the Special Judge-cum-Chief Judicial Magistrate for Prevention of Corruption Act cases, Nagercoil, in Special Case No.7 of 2012.

For Appellant : Mr.A.Robinson

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

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed, on 15/10/2019 by the Special Judge-cum-Chief Judicial Magistrate for Prevention of Corruption Act cases, Nagercoil, in Special Case No.7 of 2012.

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

The accused namely Marimuthu was the Assistant Director of Geology and Mining Department, Kanyakumari District at Nagercoil between 14/02/1986 and 15/06/2011. On 08/06/2011 at about 11.00 am, when the de-facto complainant went to the office of the accused in connection with getting the trip sheet, he demanded Rs.25,000/- for office expenditure. Later, it was reduced to Rs.20,000/-. Not willing to bribe, the de-facto complainant lodged a complaint with the respondent. Based upon the complaint, trap was laid. Case in Crime No.5 of 2010 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested in the trap. After completing the formalities of the investigation, final report was filed. It was taken on file by the Chief Judicial Magistrate/Special Judge for Prevention of Corruption Act, Nagercoil in Special Special Case No.7 of 2012 for the offence under sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

> *(1) The accused namely Marimuthu was the Assistant Director of Geology and Mining Department, Kanyakumari*

District at Nagercoil between 14/02/1986 and 15/06/2011; On 08/06/2011 at about 11.00 am, when the de-facto complainant went to the office of the accused in connection with getting the trip sheet, he demanded Rs.25,000/- for office expenditure; Later it was reduced to Rs.20,000/- and thereby the accused has committed an offence punishable under section 7 of Prevention of Corruption Act; and

(2)In the course of the same transaction, the accused by using his position as a public servant obtained Rs.20,000/- 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, 8 witnesses have been examined and 30 documents marked. Apart from that, MO1 to MO4 were marked. On the side of the accused, 3 witnesses were examined and 22 documents marked.

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

PW2 is engaged in quarrying business in name of Ganga Blue Metals at Charode area. As per the procedure and rules, he has to get trip sheet from the Mines Department. On 08/06/2011 at about 11.00 am, he went to the office of the accused for getting trip sheet. At that time, the accused demanded Rs.25,000/- for office expenditure. But later, it was reduced to Rs.20,000/-. He is not willing to bribe the official. So. On 15/06/2011, he lodged a complaint under Ex.P2 with the Inspector of Police, Vigilance and Anti-Corruption Department, Nagercoil.

6.The complaint was received by **PW4**, the Inspector of Police and made a secret enquiry with regard to the conduct of the accused. After getting proper approval from the higher authorities, registered a case in Crime No.5 of 2011 for the offence under section 7 of the Prevention of

Corruption Act. Thereafter, he made request to the Government Departments to depute two persons for assisting him in the trap. In pursuance of the above said, one Subramanian and Venkatachalam appeared before him. He introduced PW2 to the official witnesses. PW2 placed the bribe money of Rs.20,000/-. The Trap Laying Officer noted the currency note numbers in a mahazar. Then he asked Constable Kumaresan to prepare Sodium Carbonate Solution in two bottles. The official witness Venkatachalam was directed to count the currency notes. Then, he dipped his fingers separately in the solution. There was no colour change in the solution. Then, the official witness Venkatachalam smeared Phenolphthalein powder on the currency notes. The official witness Venkatachalam was once against made to count the currency notes and then the money was placed into the shirt pocket of PW2. Venkatachalam, once again dipped his hands in two solutions. Both solutions turned pink. Then PW4-Dhararaj explained the importance of the Phenolphthalein test. After completion of the formalities, they proceed to the office of the accused at about 05.00 p.m. As instructed earlier, PW2 and other witnesses went inside the office of the accused. They were hiding in a nearby place.

7.The further event is spoken by **PW2**. They went inside of the office of the accused and met him. At about

10.10 p.m, the accused enquired whether he brought money and asked him to keep the money below the pad. He put the money below the pad and came out of the office of the accused and made signal as instructed to him by the Trap Laying Officer.

8.Further event is spoken **PW4.** On getting the signal, they went inside the office of the accused and enquired PW2 about the events. He narrated the events and identified the accused. Since PW2 has told that the accused did not receive the money in his hands and asked him to put below the pad, he did not subject the accused for sodium carbonate solution test. But the pad was subjected to the sodium carbonate test. It turned pink. It was collected, labelled and sealed. Pad was also seized under the seizure mahazar. On enquiry, the accused told that he is Grade-A Officer. So, he informed the Deputy Superintendent of Police regarding the occurrence, complaint and preparation of mahazar namely rough sketch and collected relevant records and prepared the event mahazar. The money was seized under the seizure mahazar. After sending the advance intimation to the Sub Judge, he made search in the house of the accused. He recovered totally Rs.47,000/- from his house. No explanation was offered by the accused for the above said money. The money was seized under mahazar, in which the accused and other witnesses signed. The accused was arrested and remanded to custody.

9.Further investigation was undertaken by **PW8.** On getting the information from PW4, he went to the office of the accused and reached there at about 08.15 pm. He arrested the accused at about 08.40 p.m for demanding and accepted the bribe amount. It is also corroborated by the Trap Laying Officer regarding the recovery of Rs.20,000/- below the pad from the house of the accused, etc. facts. He took up further investigation and recorded the statement of the witnesses and made request to the Court to send the material objects for chemical examination and for sanction. After getting the sanction order from the concerned authorities and chemical examination report, filed the final report.

10.**PW3** is the official witness, who corroborated PW2 in material particulars.

11.**PW5** has spoken about the handing over of the relevant records to the Investigating Officer.

12.**PW6** has spoken about the trap on the particular day.

13.**PW7** is the Scientific Assistant attached to the Regional Forensic Science Lab, Chennai. She analyzed and confirmed the presence of Phenolphthalein and Sodium Carbonate Solution under Ex.P23 Chemical Analysis Report.

14.**PW8** was the Deputy Superintendant of Police, Vigilance and Anti-Corruption Unit, Kanyakumari Detachment at Nagercoil. He has spoken about the registration of the case by the Inspector Dharmaraj and corroborated him in material particulars.

15.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.

16.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 **5 years RI and to pay a fine of Rs.50,000/-,** in default to undergo 6 months SI 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 **5 years RI and to pay a fine of Rs.50,000/-,** in default to undergo 6 months SI and directed to run the sentences concurrently.

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

18.Heard both sides.

19.The charge against the accused is that while he was working as Assistant Director in the Mines Department, demanded and accepted the bribe amount of Rs.20,000/- for the purpose of discharge his official duty in issuing trip sheet for transporting mines, quarried by the de-facto complainant namely PW2.

20.Before we go into the charges framed against the accused, the backgrounds facts and the motive suggested by the accused may be briefly stated.

21.It is not in dispute that during the relevant time, the accused was working as Assistant Director in the Mines Department, where PW2 was having frequent visit for the purpose of getting the trip sheet.

22.It is also not in dispute that PW2 was doing mining work in the specified area mentioned in the complaint.

23.According to the accused, illegal mining activity was carried by PW2. On the complaint by a third party, enquiry was conducted, he made spot inspection over the allegation on 11/06/2011. The complaint was given by the third party, as mentioned above, on 10/06/2011 for the illegal mining activity committed by PW2. To wreck vengeance, in order to avoid the accused from making further enquiry and making adverse report, this complaint was given.

24.Now we will go to the sequence of events. Whether the motive suggested by the accused is true and relevant to the issue.

25.Now we will straightaway go the evidence of DW1, who was examined on the side of the accused to probabalise his defence.

26.DW1 was working as Assistant Director in the Mines Department between 10/02/2016 and 24/04/2017. A complaint was given by one Joseph, who was the former MLA of the Constituency stating that PW2 is engaged in illegal mining activities in Survey No.606/3 located adjacent of the quarrying licensed area granted to him. That complaint was given to the District Collector, on 06/06/2011, forwarded to the Mines Department, wherein the accused was working on 07/06/2011. On 10/06/2011, field survey was undertaken by the accused and sent a report on 11/06/2011. That report is marked on the side of the accused as Ex.D5.

27.We can stop here for a moment, since further action was taken subsequent to the period of complaint against the accused and trap, etc. facts.

28.Now we will go to the evidence on the side of the prosecution, keeping in mind that on 11/06/2011, the accused undertook field inspection to find out whether any illegal activity was done by the accused in the above said survey field.

29.Coming to the evidence of PW2, he has stated that on 08/06/2011 at about 11.00 am, he went to the office of the accused for collecting trip sheet or pass as the case may be. At that time, Rs.20,000/- was demanded by the accused stating that money is required for the expenditure of the office. At that time, he told him that he is doing legal business and so, there is no reason for him to give the bribe amount. But however, the accused insisted that at least Rs.20,000/- must be paid as bribe on or before 13/06/2011. On 15/06/2011, he lodged a complaint with the Trap Laying Officer. As mentioned above, trap was laid and conducted. According to the prosecution, the accused accepted the amount paid by PW2 which was kept by him on the writing pad.

30.With regard to the complaint against him, PW2 has stated he has no knowledge to a specific question as to whether on 10/06/2011, the accused along with his team of Officers surveyed the field and verified whether any mining was conducted by PW2 illegally. He does not say that it is not correct. But on the contrary, he has stated that he could not remember. So, this sort of evidence of PW2 does indicate that he is not a genuine person. Having known that the complaint was given against him, enquiry was undertaken by the accused and field survey was conducted on 10/06/2011, he completely omitted to mention all these things in the complaint lodged, on 15/06/2011.

31.We can also go further to see whether he is a genuine person. On 10/06/2011, only the accused contacted him in person. For what purpose, the accused contacted him over phone is not explained by him. He further says that on 11/06/2011 itself, the accused sent a report stating that PW2 conducted mining activity illegally and thereby, caused loss to the Government. So, he is liable to be penalized. But as mentioned above, DW2 has given categorical evidence that the report has been submitted by the accused on 11/06/2011 itself. It is not known that how this important aspect has missed the notice of the Trap Laying Officer and the Investigating Officer. It has not been satisfactorily explained by them.

32.Now we will go to the evidence of Trap Laying Officer on this issue. He has stated that whether such report was submitted by the accused against PW2 was not known to him.

33.The Investigating Officer namely PW8 has stated that such a complaint was received against PW2 and that was brought to his notice during the course of investigation. He would also admit that the inspection was conducted by the accused on 10/06/2011 and submitted a report. But he replied that the accused did not visit the survey No.606/10. But visited only the survey No.606/3. He would admit that on the basis of the enquiry report submitted by the accused, Rs.35,56,000/- was levied as penalty. Having known and having came to the knowledge that such a complaint was given by a third party against PW2 and adverse report was submitted by the accused on 11/06/2011 itself, he omitted to recover any such document.

34.It is the fundamental principle that not only a fair trial, but also the fair investigation is the human right conferred upon the accused. But how the Investigating Officer has not taken into account this important aspect is not satisfactorily explained by him. It is the duty of the Investigating Officer to investigate the matter by taking into account the above said aspect. It appears that it is nothing, but one side investigation conducted by PW8.

35.Now we will go to the evidence of PW2 as to whether he is a genuine person by taking into the subsequent events.

36.Two criminal cases were registered against PW2 for preventing the officials from discharging their official duty. One in Crime No.192 of 2011 under sections 353 and 506(ii)IPC. Another complaint was registered against him for the illegal mining activity on 22/06/2011, registered a case in Crime No.119 of 2011. Later, those cases were transferred to CBCID for further investigation. What happened after that is not clear on record.

37.It is admitted by PW2 that in both the cases, final reports were filed against him. It is submitted by the prosecution that both the cases have been registered as an act of vengeance, for which, complaint was given by PW2 against the accused. But this goes against the final report filed by CB-CID against PW2. Two State Investigation Agencies cannot blame each other. The very fact that the prosecution is one sided, which is clear on record. So, with these in mind, let us go to the main aspect of demand and acceptance of bribe.

38.According to PW2, the first demand was made on 08/06/2011 at about 11.00 am. Except his interested testimony, no other corroborative evidence is available to show that on 08/06/2011 initial demand was made by the accused. But on the circumstantial evidence the prosecution wants to prove the initial demand, by examining one of the officers of the Department, where the accused was working.

39.PW6 has stated that on 08/06/2011, PW2 came to the office of the accused for getting the trip sheet. At that time, the accused was available in the office. So, according to the prosecution, indicates that on 08/06/2011, PW2 visited the office of the accused. At that time, he made the initial demand. So, whether from this, we can say on 08/06/2011 itself the accused demanded Rs.25,000/- as bribe amount.

40.In this context, the genuineness of the PW2 comes into play. As mentioned above, PW2 is not a genuine person. So, his evidence has to be looked into with great suspicion in the absence of any corroborative evidence that on 08/06/2011, there was initial demand. In my considered view, PW2's complaint alone cannot be and should not be accepted.

41.Now coming to the trap laid on 15/06/2011, it is the evidence of PW2 that along with PW3, he entered into the office of the accused, at that time, the accused asked him whether he brought money, asked him to place the money on the writing pad in the table. He has placed the money, came out of the office, made signal, Vigilance Department Officials entered into the office. This is the specific case of PW2, so also the evidence of PW3 shadow witness. The prosecution only relied upon this event.

42.Forgetting for a moment that PW2 met the accused and subsequently appeared before him and the evidence of PW2 is corroborated by PW3 official witness, at least to believe the demand and acceptance on 15/06/2011, we can look into the trap events, provided that it inspires confidence.

43.It is the specific case of the prosecution that as mentioned above, the bribe amount was placed on the top of the writing pad, which was on the table of the accused. This is the specific case of the prosecution, where from the money was recovered.

44.In this context, the learned counsel appearing for the appellant would submit that the recovery itself is not properly established, since the prosecution witnesses contradicted themselves as to the place from whose the bribe amount was recovered. One say that it was from the top of the writing pad, another says that it was kept below the pad.

45.In this context, a defence was taken by the accused that to wreck vengeance regarding the adverse report submitted on 11/06/2011, PW2 stealthily placed the tainted money below the file, when he was not in that place.

46.It is the specific defence taken by the accused, whether this probabalise the defence taken by the accused and whether the prosecution has established that important aspect is to be considered.

47.In this context, the learned counsel appearing for the appellant would heavily rely upon the minutes prepared under Ex.P5.

48.In Ex.P5, nothing has been stated as to the availability of the bribe amount on the pad. It has been simply stated that the accused asked PW2 to place the money on the top of the file. Pad alone was subjected to the sodium carbonate solution test.

49.PW4 Trap Laying Officer contradicted PW8 on this important aspect. As per the evidence of PW4, soon-after entering into the office of the accused, after preliminary enquiry and identification, the sodium carbonate test was conducted on the file. But the money was recovered by PW8.

50.Now we will go to the evidence of PW8 on this aspect. He would say that on enquiry, the accused himself handed over the pad. The money was placed on the top of it. But PW4 Trap Laying Officer would say that the money was removed from the pad and the pad was subjected to sodium carbonate solution test. But PW8 would say that money was recovered from the top of the pad. How the contradiction occurred is not properly explained by the prosecution. This was projected by the appellant stating that this contradiction is sufficient enough to disbelieve the evidence of the prosecution.

51.In normal circumstances, we will brush aside such a minor contradictory evidences. But in the background of the previous conduct of PW2 and his subsequent conduct, when we look into the important aspect, it assumes importance. So, possibility of PW2, to wreck vengeance upon the accused, have stealthily placed the money cannot be completely ruled out.

52.Now we will go to the judgment of the trial court.

53.Para 23 of the trial court judgment is on the point that the accused has prepared the adverse report against PW2 for the purpose of extracting money. But this is quite unfair. Because, as stated above, it is not the case of the prosecution that after giving the report in favour of the accused, the accused demanded money. As stated above, the complaint was given on 10/06/2011 against PW2; Adverse report was submitted on 11/06/2011. This was not properly taken into account by the Investigating Officer. When such being the position, the conviction and sentence rendered by the trial court is without evidence and baseless. As mentioned above, not only the investigation, but also fair trial was not extended to the accused.

54.In para 24 of its judgment, the trial court went to the extent of placing the appreciation to the prosecution, but has forgotten a moment that fair investigation has not been conducted. But the circumstance relied on by the trial court that sum of Rs.47,000/- was recovered from the rented premises of the accused; There was no plausible or proper explanation on that matter by the accused. This court is completely at loss to understand the reasoning. It is not a crime, if an individual possessed money in his residence. So, no inference can be drawn that it is tainted money.

55.The trial court went on, on assumption that whenever an official, that too attached to the Mining Department, is involved in bribe of demand, acceptance must be readily presumed. It should not be the attitude of the courts. A person's own conduct in preparing adverse report has made him untrustworthy. In all fairness, he has stated all these things in the report. But the Investigating Officer has failed in his duty, as mentioned above, in investigating the matter in a fair manner. So, I am of the considered view that this is the fittest case to interfere in the judgment of conviction and sentence passed by the trial court.

56.So without going into other aspects, on the sole reason, this criminal appeal is **allowed.** The judgment of conviction and sentence passed by the trial court are set aside. The appellant is acquitted from the charges levelled against him. Fine amount if any paid shall be refunded to the appellant. Bail bond executed by him shall stands cancelled.

28/01/2025

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

1.The Special Judge-cum-Chief Judicial Magistrate for Prevention of Corruption Act cases, Nagercoil

2.Deputy Superintendent of Police, Vigilance and Anti-Corruption, Nagercoil, Kanyakumari District.

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

G.ILANGOVAN,J

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Crl.A(MD)No.500 of 2019

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