BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	19/10/2024
Date of Pronounced	09/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.378 of 2018

P.Subramanian : Appellant/Sole Accused

Vs.

State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
Madurai.
(Crime No.2 of 2009) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code r/w section 27 of the Prevention of Corruption Act, to set aside the judgment of conviction and sentence dated 28/06/2018 passed by the Special Judge for the Trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No.64 of 2011 and acquit the appellant.

For Appellant : Mr.R.Gandhi
Senior Counsel
for Mr.A.Rajaraman

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, dated 28/06/2018 passed by the Special Judge for the Trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No.64 of 2011.

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

When the accused was working as Village Administrative Officer between 01/12/2006 and 13/02/2009 at Pothumbu Village Administrative Office, on 03/02/2009 demanded Rs.2,000/- from the de-facto complainant as illegal gratification and it was reduced the same as Rs.1,000/- for recommending for transfer the house site patta in his name and received the same on 13/02/2009. Based on the complaint, Trap was laid, and a case in Crime No.2 of 2009 was registered for the offence under section 7 of the Prevention of Corruption Act. The accused was arrested and after completing the formalities of the investigation, final report was filed and it was taken on file by the Special Court for Trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No. 64 of 2011 for the offence under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After completing Sec. 207 Cr.P.C proceedings, framed the charges for the offences punishable under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. 1988.

3.**The following charges were framed against the accused persons**:-

(1)On 23/04/2010 at about 11.00 am, when the de-facto complainant gave a petition that, the accused demanded Rs.1,000/- as bribe amount to make arrangement for patta transferring and thereby, the accused committed an offence 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.1m000/- as pecuniary advantage for himself from the complainant and thereby the accused committed an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

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

5.During the trial process, on the side of the prosecution, 14 witnesses have been examined and 20 documents were marked. Apart from that, MO1 to MO6 were also marked. On the side of the accused, no oral or documentary evidence was adduced.

6.PW2 is the de-facto complainant living in Pothumbu village, Madurai district. His father was having property in that village. After the death of the father, his mother and brother executed a release deed in his favour. So for the purpose of transferring patta, he approached the accused on 03/02/2009. The application was written by the accused, signed and stated that Rs.3,000/- expenses may be incurred. He expressed his inability. But he demanded at least Rs.1,000/-. Later he went to the outstation for work. His friend Murali enquired about his request with the accused. Even at that time, the accused told Murali to ask PW2 to come and pay money along with the certain documents. So on 01/12/2009 through Murali Cell phone, he contacted the accused. Again he demanded money and certain documents. On 12/02/2009, at about 04.45 pm, he wet to the Vigilance and Anti-Corruption Department and gave a complaint to the Inspector.

7.The complaint was received by the Inspector of Police, Ramesh, examined as PW13. He registered the case in Crime No.2 of 2009 after verifying the previous antecedent of the accused, under section 7 of the Prevention of Corruption Act. He submitted the original documents to the court and the copies to the concerned authorities. He asked PW2 to come on the next day. In the meantime, he made a request to the Government to depute two responsible officials. In pursuance of the above said request, on 13/02/2009 at about 06.00 am, PW2 came to the office and later, the official witnesses namely P.Venkatechalam and M.Rajarajan appeared before him. He introduced PW2 to the official witnesses; Explained about the importance of the demonstration to be undertaken and other particulars. PW2 handed over Rs.1,000/- demanded by the accused as bribe. Sodium bicarbonate solution was prepared by the Sub Inspector of Police, Kamaraj. He dipped his hands in the separate containers. There was no change in colour. In the meantime, the serial numbers of the currency notes given by PW2 were entered in the mahazar. Thereafter phenolpthaline powder was applied to the currency notes. Again the Sub Inspector was instructed and count the same in his hands, he counted and other two sodium carbonate solutions were prepared in which the Sub Inspector of Police was directed to dip his hands. Now in this time, it turned pink. The entire events were recorded in the form of mahazar in which all the witnesses signed. Then he was directed to give the money to PW2 and to accompany the official witness. After making the entire events in the form of mahazar at about 09.45 am, they went to the office of the accused. In the midway, PW12, his friend namely Murali also joined. As instructed earlier, PW2 and the official witnesses went inside the office of the accused. At that time, police team and Murali were hiding in a nearby area. Both of them returned from the office stating that the Village Administrative Officer is not available. They told that they went to the Recreation Club in the nearby area. PW2 and the official witnesses went to the Recreation Club.

8.Further event is spoken by PW2. When they entered into the Recreation Club, the accused was available in that place, enquired about whether brought the money and documents. He replied affirmative and gave the documents and money. The accused received and put the same in his pocket. They came out of the recreation club, as instructed earlier, signal was shown by him. After getting signal from PW2, the trap laying officer namely PW13 and others went inside the recreation club and informed the Headquarters Deputy Tasildhar to come to that place to be a witness to the occurrence. Sodium carbonate solution was prepared and the accused was directed to dip his both hands in the solution. Both turned pink; were collected separately, labelled and sealed. Enquiry was made by him regarding the bribe amount, demand and acceptance by the accused. The accused handed over Rs.1,000/- from his shirt pocket. Notes particulars were compared to that of the earlier mahazar. That found to be tallied. Shirt of the accused was recovered and it was also subjected to sodium carbonate solution test. It turned pink and the shirt was recovered. The accused was not able to give proper explanation, reason for accepting the money from PW2. He handed over the documents and application submitted by PW2. He recovered the relevant records under proper mahazar. In which the Head Quarters Deputy Tasildhar and other witnesses signed. Later search was made in the house of the accused. Nothing was recovered. He submitted all the material objects and records to the court.

9.PW14 took up the investigation and submitted a request for subjecting the material objects for chemical examination, recorded the statement of the witnesses, received the chemical analysis report. After receiving the sanction order for prosecuting the case, after completing the investigation, filed a final a draft report before the Vigilance and Anti-Corruption Department, recorded the statement of the sanctioning authority. After completing the investigation, filed a final report.

10.PW3 is the official witness, who spoke about the pre-trap, trap events, etc. PW4 was the Deputy Head Quarters Tahsildar, at the relevant time, at the request of the Trap Laying Officer, he went to that place, witnessed the events and he corroborated the Trap Laying Officer.

11.PW5 is the brother of PW2, he corroborated PW2 regarding the application submitted by him for transfer of patta.

12.PW6 has spoken about the procedure to be adopted while entertaining the request for patta transfer.

13.PW7 is the friend of PW2 who went along with PW2 on 03/02/2009 to the VAO office spoken of the demand made by the accused for the first time and the second demand dated 09/02/209 when PW2 was away from his local area.

14.PW8 was working as Vodafone company as Nodal officer. At the request made by the Investigating Officer, he submitted the call details between 10/02/2009 and 14/02/2009 pertaining to the cell number and the owner details. He submitted all required records.

15.PW9 is the Regional Manager of Aircel. At the request made by the Investigating Officer he submitted the records pertaining to the cell No.9842883517 for the period between 11/02/2009 and 13/02/2009.

16.PW11 is the Scientific Officer attached to FSL, Chennai. He examined the material objects submitted by the trap laying officer and submitted the report under Ex.P14.

17.PW12 is the search officer who conducted search in the house of the accused situated at Gandhi Nagar, Batlagundu, Dindigul district at the request made by the Trap Laying Officer. According to him, nothing was recovered from his house.

18.After completing the prosecution side witness, the accused was put on 313 Cr.P.C question. He denied the allegation. On his side, as mentioned above, no witness was examined.

19.After considering the evidence, both oral and documentary, the accused was found guilty for the offences under section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo **2 years RI** and to pay a fine of Rs.1,000/- in default to undergo 3 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, and sentenced him to undergo **2 years RI** and to pay a fine of Rs.1,000/- in default to undergo 3 months RI and directed to run the sentences concurrently.

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

21.Heard both sides.

22.The case of the prosecution in brief as per the dates and events.

On 02/02/2009, the first initial demand alleged to have been made by the accused when PW2 gave the application for transfer of patta. On 09/02/2009, PW7 his friend and relative of PW2 approached the accused in respect of his own issue, at that time, it is stated that the accused informed PW7 to intimate PW2 to come on the next day along with money, the bribe amount and relevant records. There was no meeting between the accused and PW2 on 09/02/2009. That intimation or information was furnished to PW2 by PW7. Again, on 11/02/2009, through his mobile phone, PW2 contacted the accused and even at that time, the above said demand was made and asked him to come on the next day along with bribe amount and relevant records. On 11/02/2009, it is seen that PW2 was in outstation. On 12/12/2009, the complaint was given. Trap was laid on 13/02/2009 and the story follows.

23.The defence taken in short is that neither demand nor acceptance of the bribe amount was made by the accused. On the particular date of the trap, PW2 against the consent of the accused the money was put in the pocket of the accused, the accused took the money dropped in his pocket, gave to PW2. Again PW2 put the same in his pocket. That was the short defence made by the accused with regard to the acceptance, recovery, etc.

24.Another contention on the part of the defence is that he is not the competent person to entertain any application for transfer of patta. If at all patta transfer order can be passed only by the Tasildar not by him. The is the foundational facts, the prosecution case is baseless.

25.The third defence is that the place of trap and recovery is not properly established by the prosecution. We will deal with the issue in the later portion of the judgment. Suffice to say that this is the short substance of the defence argument before the trial court.

26.With this in mind, we will go to the main issue as to the initial demand alleged to have been made by the accused on 03/02/2009. At that time, the accused demanded Rs.3,000/- as bribe amount. PW2 expressed his inability, it was reduced to Rs.1,000/-. He was asked to bring all the relevant records and bribe amount. Regarding this initial amount on 03/02/2009, it is the evidence of PW2 that along with PW7 he went to see the accused.

27.Now we will go to the evidence of PW7 Murali. He has stated that on 03/02/2009 at about 11.00 along with PW2 he also went to the office of the accused. The initial bribe amount demanded was Rs.3,000/-. Later, it was reduced to Rs.1,000/-. The accused stated that it is sufficient Rs.1,000/- is paid to him. So, this is the evidence of PW2 and PW7 with regard to the first initial demand on 03/02/2009.

28.Now, according to the prosecution, the initial demand has been properly established. Now we will go to the cross examination made by the accused with regard to the occurrence on 03/02/2009.

29.A simple denial is made and nothing concrete favouring defence has been brought on record during the course of cross examination. The cross examination of PW7 was mostly devoted to his involvement in a particular political party, so also PW2. So, there is nothing on record to show that there was no initial demand on 03/02/2009 by the accused. But on the contrary, I find absolutely no reason to discard the evidence of PW2 and PW7 on the issue of initial demand.

30.Now we will go to the next date namely 09/02/2009. It is the specific evidence of PW2 that on

03/02/2009 he went outstation. So he did not contact the accused in between. But on 09/02/2009, PW7 went to the office of the accused regarding his own work. At that time, the accused repeated the very same demand, when enquiry was made by PW7 regarding the stage of the request made by PW2. So, according to PW7, on 09/02/2009 at about 10.00 am, he went to the office of the accused and the accused himself made enquiry with regard to the request made by PW2. He said that PW2 went outstation. In this time the accused told him that he may inform PW2 to bring the money and relevant records. With regard to the demand, that was made on 09/02/2009 through PW7, except PW7 there is no other contra evidence.

31.The third occurrence said to have taken place on 11/02/2009. On that day, it is the case of the prosecution and the evidence of PW2 that he contacted the accused through the mobile phone of PW7. At that time, again the accused told him to bring the money and the relevant records on 13/02/2009.

32.Turning to the evidence of PW7, he has stated that at about 3.35 pm, PW2 contacted the accused through his mobile phone. The conversation took place between PW2 and the accused was in turn informed to him. Now on that particular occurrence, the prosecution relied upon the evidence of PW8 and PW9. PW7 says that his mobile number is 9842883517. Now turn to the evidence of the service provider namely PW9, would say that he was working as Senior Legal Adviser in AIRCEL company during the relevant time. According to him, the above said mobile number belongs to Murali. It is further seen that on 11/02/2009 at about 08.45 am, and again at 03.00 pm, the calls were made to phone numbers 9842883517 and 9626284563.

33.We can have a reading of the evidence of PW8 and the other service provider namely PW9.

34.As mentioned above, PW8 is attached to VODO Mobile service provider. PW10 is the AIRCEL company's Legal Adviser. Comparative reading of the both evidence would reveal that as stated by the prosecution, there was communication between the mobile phone of PW7 Murali and the accused on two days. So, this stands establishes to the effect that on 11/02/2009 and 12/02/2009, there was communication between those two mobile phones.

35.Now in this context, we will go to the arguments advanced on the side of the appellant.

36.According to the appellant, one of the mobile phones tower location has shown as Pondicherry and not the occurrence place. But there is no clear evidence on record to show that from which place the communication was made. Moreover, as if stand established through documentary evidence that there was communication between two mobile phone numbers, no doubt can be raised with regard to the using the mobile phones. The tower location of one of the mobile phones may not assume importance at all.

37.Now if stand established on the side of the prosecution that as stated by PW2 on two days, the accused was in contact with PW2 and PW7. But without recording the conversation between them, it is only a remote possibility without any recording conversion, So, it cannot be stated that the accused really demanded the bribe amount through the mobile phone. So, we can ignore. But the initial demand made on 03/02/2009 and 09/02/2009 stand established on the side of the prosecution.

38.Now let us go to the trap proceedings.

39.As stated in the preamble portion, there is no doubt with regard to the Pre-trap proceedings. In fact, no doubt was also raised. As stated above, it is a simple case of the defence that money was dropped in his pocket in spite of his protest. So the pre-trap arrangements need not be taken in an extensive manner.

40.Now we can straightaway go to the trap proceedings. PW2 has state that as per the instruction, they went inside the office of the accused. But the accused was not available and on the way at about 09.45 am, PW7 Murali informed him that the accused is not available in the office, went to the Taluk Office. At about 12.45 pm, PW7-Murali also joins with him and through the mobile phone the accused informed that he has reached Taluk Office and asked them to come there. Along with the police team, they went to the Taluk Office. But again, they were told that the accused went to the recreation club in a nearby place. So, they went to the recreation club and handed over the documents required to the accused. He accepted the bribe amount, put the same in his pocket; they came out of the office and made signal. At that time, Murali and the official witnesses were present along with him. This is the chief examination.

41.Now we will go to the evidence of the official witness namely PW3. He corroborated PW2 on the particulars with regard to going to the office of the accused and later on information given by Murali went to the Taluk Office and then to the recreation club. The accused received the money namely accepted the money. After making enquiry put the same in his pocket.

42.Now we will go to the evidence of PW7 Murali. He has stated that on enquiry, he came know that the accused was not available in the office, went to the Taluk Office. He informed the same to PW2. PW2 asked him to come to Gandhi Museum area. He went to that area and joined with PW2. They reached the North Taluk Office. But he did not go inside the office. But waiting outside the office. It was informed to them that the accused is not available in the office, available in another area in the same campus. He was waiting outside. After sometime, PW2 came out of the office and informed that the accused was available in the North Taluk Office area. He was waiting in the area situated on the left side and the accused received the bribe amount from them. This is the evidence of PW7 during the course of examination, which is quite contrary to the evidence of PW2 and PW3.

43.But they have corroborated each other to the material fact that PW7 did not visit the office of the North Taluk Office. So, the presence of PW7 along with the team is quite doubtful, for the simple reason that he completely differs from the evidence of PW2 and PW3 as to from where recovery was made. But, as mentioned above, PW2 and PW3 are very categorical in their evidence that only in the recreation club, the occurrence took place. But PW7 says that only in a room, which was located in the eastern sde of North Taluk Office, acceptance and recovery has been made.

44.Now let us go to the evidence of the Trap Laying Officer. He would say that PW7 Murali joined with them in midway. When they reached the North Taluk Office, they were informed that the accused was not available and he has gone to nearby area where the recreation club is located. PW2 and PW3 went inside the recreation club there from acceptance and recovery were effected. So, This also clarifies the position that PW7 would not have been present at the time of trap. So, we can ignore PW7.

45.From the evidence of PW2, PW3 and the trap laying officer and from the mobile phone communication between them, it stand established that the occurrence of acceptance and recovery was made in the recreation club. It can also confirm from the further evidence of the official witnesses, who were asked to witness the trap proceedings.

46.PW4 was working as Head Quarters Deputy Tashildar, Madurai North Taluk Office from January 2009. On 13/02/2009 at about 12.15 pm, the police team attached to the Vigilance and Anti-Corruption came to his office and there the trap laying officer requested him to be a witnesse to the trap proceedings and and he witnessed the trap proceedings, he has signed in the document prepared in that. Nothing is brought on record to discard his evidence. A simple cross examination was made to him to the effect that what was received by the accused is not the bribe amount, but only a kist towards land tax.

47.From the evidence of PW4, we can easily confirm that only in the recreation club, the trap succeeded. From the evidence of PW2, PW3 and PW4, it stands established that the accused accepted Rs.1,000/- as bribe amount and recovery was effected. I am short on the simple point that recovery of money from the accused is not denied by him. As stated above, what is stated by him are two things. At one stage, he would say that money was throat in his pocket. That was the plea during trial. A plea that was taken during the trap proceedings is that the PW2 gave the money voluntarily to meet out the expenses of the office of the accused, and third one is, what is received by him is not the bribe amount, but on the contrary, it is a legal amount towards tax and kist as the case may be. When recovery itself is not disputed, we need not concentrate much upon other aspects in detail about the mahazars prepared and etc. facts.

48.Now the argument advanced on the side of the accused as to the evidentiary value of PW3. PW3 has stated during the course of cross examination that he was a witness to two cases registered by the Vigilance and Anti-Corruption Department. But only in this case, he was summoned to be a witness and he has given evidence. It was pointed out by the appellant that he is a stock witness. But this sort of things cannot be taken into account. An official is bound to cooperate with the trap laying officer in the process. He was sent by his Department. The trap laying officer is not very specific to send PW3 alone for assisting him. So, no thing was brought on record to show that PW3 was specifically chosen by the Trap Laying Officer. The minor contradiction as to who summoned him does not assume any importance at all.

49.The next argument is regarding the request made by PW2. It is the case of the defence that it is admitted that property belongs to the father and childrens. But the sister who is one of the legal heirs of the father was not aware of the request made by PW2 for transfer of patta. According to the defence, in a short cut manner without going the process of getting the legal heirs certificate, PW2 wanted to transfer the patta directly in his name. That request was not considered by this accused and being a member of a political parti, who is in the habit of making complaint against the officials, now this case has been foisted.

50.I am unable to agree with this line of argument. A simple case, wherein the accused had demanded and accepted money. Now it has been stated that the accused in real tried to prevent PW2 to get the transfer of patta illegally and this defence was not taken during the court of trial. To this, it was suggested that the accused is the competent person to order transfer of patta. If at all only, Tashildar can make the order on going through the process. This also does not hold good for the simple reason that when patta transfer request is made, automatically the recommending authority after making enquiry is the accused. So by that way, it appears that the accused utilized the position and demanded the bribe amount.

51.In fact, it is the specific evidence of PW2 that only the accused himself wrote the request on his behalf and got his signature. So, this is too late for the accused to make such sort of defence, which will not lie. So the conviction rendered upon the appellant deserves no reconsideration and liable to be confirmed.

52.Regarding the sentence, the trial has imposed a sentence of two years RI for each offence.

53.The learned Senior Counsel appearing for the appellant would submit that the appellant is suffering from **cerebral atrophy with chronic ischemic changes** and only on that reason, the suspension of sentence was passed by this court in Crl.MP No.8265 of 2018 in Crl.A(MD)No.378 of 2018. By relying upon the various judgments such as Kiran Chander Asri Vs. State of Haryana [(2016)1 SCC 578] and S.Sundar Kumar Vs. State Represented by the Inspector of Police, Vigilance and Anti-Corruption, Thoothukudi [(2022)17 SCC 61] would submit that the sentence may be reduced.

54.In **Kiran Chander Asri's** case by taking into account various factors reduced the sentence to the minimum statutory period of one year. Similarly, in **S.Sundara Kumar's**, mentioned above, considering the age, it was reduced to one year.

55.Considering the age as well as the illness which the appellant is suffering, the sentence of imprisonment alone is reduced to **one year Rigorous Imprisonment** for both offences. The fine amount imposed by the trial court is sustained for both offences. Both the sentences are ordered to run concurrently.

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

09**/01/2025**

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

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

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

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

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G.ILANGOVAN,J

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Crl.A(MD)No.378 of 2018

09/01/2025