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Crl.A(MD)No.386 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/10/2024
Date of Pronounced	29/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.386 of 2018

State represented by
The Public Prosecutor,
High Court,
Madras-104.
(Crime No.11 of 2005)
of V & A.C, Tirunelveli : Appellant/Complainant

Vs.

Soundarapandian : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent passed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, in Special Case No.16 of 2014, dated 24/03/2017.

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

For Respondent : Mr.T.Lajapathi Roy,
Senior Counsel
for M/s.T.Lajapathi Roy and
Associates



J U D G M E N T

This Criminal Appeal is filed against the judgment of acquittal passed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, in Special Case No.16 of 2014, dated 24/03/2017.

2.The case of the prosecution in brief:-

The Accused Soundarapandian was the Village Administrative Officer of Uthumalai Village, Veerakeralampudur Taluk, Tirunelveli district. He demanded Rs. 2000/- as bribe, later it was reduced to Rs.1,500/- from the de-facto complainant for recommending transfer of name in the patta. Not willing to bribe, the de-facto complainant lodged a complaint with the respondent police. Based upon the complaint, trap was laid. Case in Crime No.11 of 2005 was registered for the offence under section 7 of Prevention of Corruption Act. The accused was arrested in the trap. After completing the investigation formalities, filed final report for the offences under section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act. It was taken on file by the Special Court for Prevention of Corruption Act, Tirunelveli as Special Case No.16 of 2014. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-



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(1)On 09/08/2005 at about 11.15 pm, when the de-facto complainant gave a petition seeking for name transfer in the patta, the accused demanded Rs.2,000/- as bribe amount to make arrangement for such name transfer in Patta, later it was reduced to Rs.1,500/- and thereby, the accused has 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.1500/- as pecuniary advantage for himself from the complainant and thereby the accused has committed an offence punishable 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, 21 witnesses have been examined and 43 documents were marked. Apart from that, MO1 to MO4 were also marked. No oral or documentary evidence was adduced on the side of the accused.



6.**PW2** is living in Uthumalai Village. The property in survey No.445/5 measuring 1.36 Acres belonged to him and his brother ancestrally. It was standing in the name of their father Muthiah Thavar. He died 10 years prior to the occurrence. On 26/07/2005, he gave a petition before Veerakeralampudur Taluk Office for transfer of patta. In that petition, his brother also signed. Till 04/08/2005, there was no response from the Government Official. So, on 05/08/2005 at about 01.00 pm, he went to the Village Administrative Office, Uthumalai, where the accused was working. He made enquiry with regard to the stage of his petition. At that time, he demanded Rs.2,000/- for himself. It was reduced to Rs.1,500/-. He told him that unless the money is paid on or before 8th, he will cancel the patta. He returned to the house and informed the same to his brother. His brother told him that such a huge amount need not be given. So, on 08/08/2005 at about 10.30 am, he went to the Vigilance and Anti-Corruption Police Wing and lodged a complaint by way of statement. That was reduced into writing. Based upon his complaint, the case was registered.

7.Further event is spoken by **PW18** who was working as Inspector of Police, attached to the Vigilance and Anti-Corruption Department, Tirunelveli. He registered a case in Crime No.11 of 2005 under section 7 of the Prevention of



Corruption Act. He submitted the original FIR to the Court and the copies to the concerned higher authorities. He made request to the Government Departments to depute two persons for assisting him in the trap proceedings. In pursuance of the above said request, PW3 namely K.Avudaiappan and Parvathinathan were present before him at about 12.45 pm. He introduced the witnesses to PW2. PW2 handed over Rs.1,500/- consisting of 500/- notes, numbering about 3. The witness Parvathinathan counted the money, serial numbers were mentioned in the mahazar under Ex.P5. Sodium Carbonate solution was prepared. The witness namely Parvathinathan was directed to dip his right hand. But there was no change in colour. Later, the money was smeared with phenolphthalein powder. The witness Parvathinathan again counted the money. Later, he dipped his hands in the Sodium Carbonate solution. It turned pink. He narrated the importance of the test to the witnesses as well as PW2. Later, PW2 put the money in his pocket; He asked him to approach the accused; If any demand is made by the accused, he must give the money. He requested PW3-Avudaiappan to accompany PW2 and witness the occurrence. Further, he asked PW2 to give signal, if the bribe amount is received by the accused.

8.Again another mahazar was prepared minuting the events. Later along with the witnesses, a team of police



men, they proceeded to the accused office. At about 01.45 pm, reached Uthumalai Village Administrative Office. They were hiding in a nearby place. PW2 and PW3 were directed to follow his instructions already given. PW2 and PW3 went inside the accused office. At that time, the office was found locked. So, the entire team returned to the office. He asked PW2 to keep the money with him and requested PW3 and other witnesses again to be present before him. On the next day, at about 08.45 am, he prepared the mahazar narrating the entire events under Ex.P6.

9.On 09/08/2005, again PW2 and PW3 and the official witnesses Parvathinathan present before him. Again, the very same process was repeated. That was reduced into writing. Again, the police team went to the office of the accused at about 10.30 am.

10.The further event is spoken by **PW3**. He would say that as per the instructions given by the Trap Laying Officer, he enquired the accused about the petition. At that time, he asked whether he has brought the money. He gave Rs.1,500/-, which was received by the accused, put the same in his right pant pocket. Both of them came out of the office. As instructed by the Trap Laying Officer, he gave the signal.



11. Further event is spoken by **PW18**. He enquired PW2 about the events and he narrated. After identifying the accused, PW2 was asked to go away. He introduced the police team and Parvathinathan to him, prepared Sodium Carbonate solution, asked the accused to dip his right hand. It turned pink. Sodium Carbonate solution was collected in a separate bottle, labeled and sealed. In the sample, PW3 and Parvathinathan signed. He asked the accused about the bribe amount. The accused admitted that he accepted the money and produced MO1 series. He compared the serial numbers MO1 with that of the serial numbers mentioned in the mahazar prepared earlier and found to be tallied. The accused pant was dipped. Other solution prepared. It turned pink. That pant was seized and sample was collected in some other bottle, labelled and sealed. The accused told the police team that he forwarded the patta transfer application to the Taluk Office, after making recommendation and later, received the patta transfer order and produced the same. After the process was over, he prepared another Mahazar, wherein also Pavathinathan, PW3 and he himself signed. The accused was arrested and remanded to custody. Search was made in his house. After sending the intimation to the concerned court, made search in the house of the accused. Nothing was seized. He handed over the file to Deputy Superintendent of Police for further investigation.



12.Further investigation was taken by **PW19-DSP** attached to the Vigilance and Anti-Corruption Department, Tirunelveli. He recorded the statement of the witnesses and seized the relevant documents and registers from the Taluk Office, Veerakeralampudur and submitted the material objects for further examination and chemical examination to FSL. After receiving the report and recording the statement of the Scientific Officer, he handed over the file.

13.The successor namely **PW21** took up the further investigation. On 23/10/2005 recorded the statement of the witnesses, mostly the officials attached to the Revenue Department submitted the records to the Director of Vigilance and Anti-Corruption Department, received Ex.P1 sanction letter. After completing the investigation, filed the final report.

14.**PW3** Avudaiappan corroborated PW18 in material particulars.

15.**PW4** was working as staff in the Computer Section of Veerakeralampudur Taluk Office. He made entry in Ex.P12 about the patta transfer application presented by PW2.



16. **PW5** was working as Tasildhar in Veerakeralampudur between 21/09/2005 and 30/09/2005. He has spoken about the procedure followed in the Taluk Office in processing the patta transfer request. He received the patta transfer application No.623 of 2005 from PW2, on 23/07/2005, that was forwarded to the Village Administrative Officer for his recommendation. He has spoken about the target fixed for collection of flag day celebration. He suspended the accused following the trap proceedings.

17. **PW6** was another Tashildar working during the relevant period. She forwarded the request made by PW2 and his brother to the Village Administrative Officer, on 04/08/2005. On the very same day, the accused sent a representation, forwarded the file to the Computer Section. She signed in the patta transfer order, on 08/08/2005.

18. **PW7** was working in Taluk Office, Veerakaralampudur as draft-men and spoken about the revenue records pertaining to the property owned by PW2 and his brother.

19. **PW8** has spoken about the remittance of the land tax.



20.**PW9** has spoken about the target fixed for Veerakalarampudur Taluk Office for collection of flag day celebration.

21.**PW10** spoken about the non availability of the records pertaining to the patta transfer order issued in favour of PW2.

22.**PW11** has spoken about the revenue records pertaining to the property.

23.**PW12** is not the material witness, so also PW13. He has stated about the payment of the money by the accused to him and his brother.

24.**PW14** has spoken about the arrest of the accused and he signed in the process memo.

25.**PW15** has spoken about the mistake committed by the office in granting the transfer of patta, without proper entries in the relevant records.

26.**PW16** has spoken about the procedure to be followed by the office in processing the patta transfer application. He has also spoken about the process, adopted for patta transfer application filed by PW2.



27.**PW20** examined the material objects submitted to him, and further analysis of the material objects. He submitted the report under Ex.P38.

28.After closure of the prosecution evidence, when the accused was questioned u/s.313 Cr.P.C, on incriminating circumstances appearing against him, he denied the same.

29.At the conclusion of the trial process, the trial court acquitted the accused from the charges framed against him.

30.Against which, this criminal appeal is preferred by the State.

31.Heard both sides.

32.It is a judgment of acquittal, the principles to be taken into account while deciding the appeal against the acquittal must be kept in mind as detailed in the judgment reported in **Sanwat Singh & others Vs. State of Rajasthan (AIR 1961 SC 715):-**

"(i)Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;



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(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

33. It is further settled that the appellate court has full power of reviewing the evidence, can come to its own conclusion and the duty is cast upon the appellate court to record a finding of fact which caused it to differ from the judgment of acquittal and the reason must be



assigned for differentiating from the view taken by the trial court.

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34.With these principles in mind, now let us go to the evidence on record.

35.Now the dates and events for better appreciation of facts. On 26/07/2005, the de-facto complainant namely PW2 gave a petition for transfer of patta in favour of himself and his brother under Ex.P2; Till 04/08/2005, there was no proper reply from the authorities concerned; On 05/08/2005, the de-facto complainant approached the accused and made enquiry; At that time, it is alleged that he demanded Rs.2,000/- as bribe amount, later, it was reduced to Rs.1,500/-; On 08/08/2005, he lodged a complaint with the Trap Laying Officer under Ex.P3.

36.Now coming to the petition for transfer of patta; it is not denied and disputed. During the course of the cross examination, it was suggested to him that the earlier request made by the de-facto complainant was not attended. So, another petition was made by him, on 20/08/2005. That was admitted by PW2. On which date, the above said request was made, we have to go to the evidence of the concerned Revenue Authority, who dealt the petition. Even though, it may not be answered, but keeping the records right, this must also be discussed and answered.



37.Ex.P9 is the petition, dated 27/07/2005. Ex.P20 is the challan towards process in the petition. It is dated 28/08/2005. The patta was transferred, by order, dated 04/08/2005 under Ex.P33, which is prior to the date of the complaint.

38.Now it is the allegation on the side of the prosecution that the accused after getting the patta transfer order from the concerned authority, by keeping the same, demanded the bribe amount.

39.In view of the above said documentary evidence on the side of the prosecution, now it stands established that the petition was made as early as on 27/07/2005. It was processed, later patta was transferred. What happened to the petition earlier filed or presented by PW2 need not be given any importance at all.

40.Regarding the issue of patta transfer order, PW5 has admitted during the course of cross examination that on the basis of the petition presented by PW2 on both occasions, the accused filed the report in time, based upon which patta transfer order was passed, on 04/08/2005. To whom, it was given is a matter for consideration at the time of discussion in the main issue.



41.The Officer, who passed the transfer order was examined as PW6. He would say that both petitions were placed before him for necessary orders. After completing the official formalities, he passed an order on 04/08/2005. He signed in the order, on 08/08/2005 and forwarded the same to one Kannan, Section Clerk, who was examined on the side of the prosecution as PW4. How it was given to the accused, as mentioned above, will be taken up later. In this regard, the evidence of PW7, PW8, PW9, PW11 and PW13 the brother of PW2, PW15 and PW16 evidences need not taken in detail.

Now the defence taken:-

42.The first defence is that there was an issue between two community people in that village. One of the community people, filed a suit before the Tenkasi Court. PW2 belongs to a particular community. There was compulsion on the part of PW2 to the accused to give evidence in support of their case. But that was not considered by the accused. Because of that, PW2 entertained animosity with him.

43.The second ground is that Murugan, who was working as Thalaiyari under the accused during the relevant point of time, was found guilty in a Departmental Proceedings, enquiry conducted regarding the falsification



or tempering of the official records. PW2 is known to the said Murugan. Through PW2, Murugan wanted to collect the records, for which the help of the accused was solicited. But the accused refused. This also caused animosity. In fact, the said Murugan attended the court on several occasions along with PW2.

44.The third defence is that the order of transfer was passed as early as on 04/01/2005; There was no occasion for the accused to demand and accepted the bribe amount alleged by the prosecution.

45.Another defence is that there was enmity between the Trap Laying Officer and the accused. By engaging PW2, the Trap Laying Officer wrecked Vengeance. The first two defences were put to PW2 during the course of cross examination, wherein he denied. Regarding the third defence, PW2 may not know.

46.Now we will go to the evidence of the Trap Laying Officer, to know what was the motive suggested.

47.It was suggested to the Trap Laying Officer namely PW18 that on 08/08/2005 itself, the accused explained that the order of patta transfer was passed, on 04/08/2005 itself. At that time, the Trap Laying Officer



asked the accused to get the computerized patta and produce before him, for which the accused refused and because of that, the Trap Laying Officer entertained animosity. So, because of that, the accused was taken from the office to the Vigilance Department, wherein all the documents were prepared and the case has been foisted.

48. Leaving all those defences for a while, we will go to the ground of acquittal relied upon by the trial court.

49. At this juncture, the learned Additional Public Prosecutor would submit that the evidence of PW2 and PW3 corroborated regarding the demand, acceptance and recovery. But the trial court on the flimsy reasons and unfounded grounds, rendered the judgment of acquittal, which requires to be interfered.

50. But now we can keep the initial demand, that has been alleged by the accused for a while. We will go to the pre-trap event. This is the trap event, which is heavily relied upon by the accused before the trial court for getting an order of acquittal.

51. It is the specific case of the prosecution that PW2 lodged a complaint on 05/08/2005 at about 10.30 am; It



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was reduced into writing; Based upon which, a FIR was registered, trap was laid, conducted on the very same day.

But it failed on that day because of the office of the accused found locked. So, the trap was again conducted on the next day on 09/05/2005. He was present before the Trap Laying Officer. On the next day morning, they have started from the office of the Vigilance Department at about 09.15 am. The exact time of reaching the office of the accused is not stated by PW2. While cross examining, he would say that it will be around 11.00 am.

52.PW3 the shadow witness would also say that they reached the office of the accused at about 11.00 am. The Trap Laying Officer namely PW18 has also stated that it was around 11.00 am. We can take that the trap was conducted at about 11.00 am, on 2/08/2005.

53.As mentioned above, the prosecution heavily relies upon the evidence of PW2 and PW3 and PW14 who was working as Senior Surveyor in the Revenue Department. He was also present on 09/05/2005 in the office of the accused.

54.We will go to the evidence of PW14. During the course of the chief examination, he would say that on 09/08/2005 at about 10.00 am, he went to the office of the



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accused. At that time, the accused was present in the office. At about 12.30 noon, the Vigilance Department officials came and obtained the signature in the charge memo and recovered some records and documents. Apart from that, he has also signed in the arrest memo. During the course of the cross examination, he would say that within 4 or 5 feet away from the chair of the accused, he was sitting along with the Vigilance Department Officials. PW1 namely the Trap Officer also entered into the office stating that PW2 lodged a complaint against the accused and so, enquiry must be made with him and for that purpose, they took the accused along with them. At that time, the accused stated that he received the tax amount. Though that amount remitted in the tax office, the Vigilance Department Officials received the tax collected from the accused, gave to him for remittance. So, the sum and substance of PW14 evidence is that the officials along with PW2, Vigilance officials entered into the office of the accused, took him along with them for enquiry. He has not spoken anything about the enquiry alleged to have been made by the accused to PW2 regarding the bribe amount, accepted the same, identification of the accused to the Trap Laying Officer and his team by PW2, sodium carbonate solution test undertaken, recovery of money from the accused, preparation of mahazar and etc. facts.



55.As mentioned by the trial court, PW14 was not treated as hostile by the prosecution. So, the trial court doubted the Trap itself.

56.Whether the finding of the trial court requires re-appreciation is the only point to be decided by this court. Before that, the defence taken by the accused must be addressed. In respect of the defence taken by the accused, absolutely there is no evidence on record. There is no occasion, either for PW2 or the Trap Laying Officer to wreck vengeance upon the accused for not supporting them in one way or other. All these defences are merit-less.

57.Coming to the main issue whether the evidence of PW14 will prevail over the evidence of PW2 and PW3 or whether PW14 is capable of tilting the stand in favour of the accused. Why PW14 was not treated as hostile by the prosecution is not known. It appears that he is a neutral person working in the office, need not support any one. But during the cross examination, nothing was put to him that the accused made enquiry with PW2 regarding the bribe amount, accepting the same, recovery was made, etc. Even during the course of the argument before this court, the prosecution was not able to say anything regarding the evidence of PW14. They simply stated that the evidence of PW2 and PW3 cannot be discarded. But, as mentioned by the



trial court, when two views are possible, then one which is in favour of the accused must be taken. So, we can take the evidence of PW14. The trap itself is doubtful. PW14 is very clear in his evidence that the accused was taken by the Vigilance Department people along with them stating that enquiry must be made. He signed in the arrest memo also. Why he has not signed in the mahazar prepared by at the time of trap is not explained by the prosecution. On this aspect, we will go to the evidence of the prosecution witness namely the Trap Laying Officer. He would say that whether Masanam was available throughout the proceedings or not was not noticed by him. Nothing was stated by him in the mahazar. So, regarding the trap, except the evidence of PW2 and PW3 and the Trap Laying Officer, no other independent witness is available.

58.The evidence of the Trap Laying Officer that he did not notice whether PW14 Masanam was available throughout the proceedings in the very same room is completely unbelievable. From this, it is seen that the Trap Laying Officer has not come to the court with clean hands. He wanted to suppress the material facts. For what purpose, such sort of attitude was taken by him is not known.



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59.In the light of the above defence taken that actually no trap was laid on 09/06/2006 in the office of the accused is probablised. In fact, the alleged demand on the date of the trap, acceptance and recovery falls to the ground. When the trap itself is unbelievable, then the allegation of the PW2 that the accused demanded Rs.2,000/- as bribe amount on 05/08/2008 also cannot be believed. So, this aspect alone is sufficient enough to disbelieve the prosecution case, without going into other aspects.

60.So, the trial court has taken a probable view which cannot be considered to be perverse. This is not the fittest case to reverse the finding recorded by the trial court.

61.In the result, this criminal appeal is **dismissed**, confirming the judgment of acquittal passed by the trial court.

29/01/2025

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To,

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



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