



CrI.A.No.627 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 04.09.2023

Pronounced on: 19.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.A.No.627 of 2016

V.Radhakrishnan,
S/o.Vadivel,
Koottathupatti Village,
Salem District.

... Appellant/Accused

/versus/

State represented by:
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Salem,
Salem District.
(Crime No.14/AC/2003)

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973, pleased to set aside the order passed by the Special Judge, Special Court for trial under the Prevention of Corruption Act, Salem, in Spl.C.C.No.37 of 2014, dated 27.07.2016, and the same is illegal and pass such further or others orders of this Hon'ble Court.

For Appellant : Mr.R.Rajarathinam, Senior Counsel,
for Mr.V.Johnson Yuvaraj.

For Respondents : Mr.S.Udaya Kumar,
Government Advocate (CrI.Side)



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J U D G M E N T

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This appeal by the sole accused a public servant held guilty by the trial Court for the offences under Section 7 and Section 13(2) r/w 13(1)(d) of P.C Act.

2. The case of the prosecution:-

Tr.V.Radhakrishnan (accused) while serving as VAO of Kottathupatty Village, Tr.S.Gomethagan (defacto complainant) met the accused on 20.11.2003 and enquired about the Patta transfer application dated 17.11.2003 submitted by him at the Tahsildar Office, Vazhapadi. At that time, the accused demanded illegal gratification of Rs.2000/-. The defacto complainant expressed his inability to meet the said demand. The accused suggested the complainant to pay the illegal gratification in two instalments. The demand of illegal gratification was reiterated by the accused again on 22.11.2003 at 11.30 hours when the complainant went to Panchayat Union Elementary School for affixing additional sheet in the Ration Card.

3. A written complaint narrating the demand of illegal gratification of Rs.2000/- in two instalments of Rs.1000/- by the accused for name transfer



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in the Patta was lodged on 24.11.2003 at 9.30 a.m. After registration of the

case, trap was laid. At about 15.15 hours the accused demanded and accepted Rs.1000/- from the defacto complainant. The said transaction was witnessed by the shadow witness Paramasivam. The phenolphthalein smeared currency of one 500 Rupees notes and five hundred rupees notes were recovered from the accused which was kept in the left outer shirt pocket.

4. The solution mixed with sodium carbonate turned pink when the accused hands were dipped. Samples of the hand wash solutions was collected in a bottle sealed and labelled. The shirt was recovered, the shirt left pocket portion was subjected to sodium phenolphthalein test and sample been collected. The file relating to the name transfer in patta made by the defacto complainant and Rs.400/- which was kept in the left right side table drawer were seized. After being satisfied that, Rs.400/- was collected by the accused as flag day donation, receipt and counterfoil was produced by the accused, same was remitted in the Government account.

5. After collecting the chemical examination report from the SFL and obtaining sanction to prosecute the accused under Section 19 of the P.C



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Act, final report been filed before the Chief Judicial Magistrate and Special Judge for Prevention of Corruption Act, cases at Salem.

6. The trial Court framed charges under Section 7 and 13(2) r/w 13(1)(d) of P.C Act. To prove the charges, the prosecution examined 10 witnesses (P.W.1 to P.W.10), 20 Exhibits (Ex.P.1 to Ex.P.20) and 7 material objects (M.O.1 to M.O.7) were marked.

7. The trial Court accepting the case of the defacto complainant P.W.2 regarding the demand and acceptance of Rs.1000/- as bribe by the accused on 24.11.2003, convicted and sentenced him to undergo 1 year R.I and to pay fine of Rs.5000/-, in default to undergo 6 months S.I for the offence under Section 7 of P.C Act and to undergo 2 years R.I and to pay fine of Rs.10,000/-, in default to undergo S.I for 6 months.

8. The evidence of P.W.3, the shadow witness recovery of tainted money M.O.1 series and the chemical analysis report Ex.P.17 were taken as corroboration for the evidence of P.W.2.



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9. The Learned Senior Counsel for the accused directed the appeal

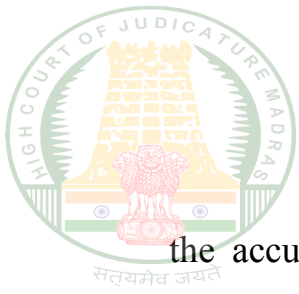
challenging the trial Court judgment on the following grounds:-

(i). P.W.2 evidence indeed not corroborated by other evidence.

Evidence of P.W.3 shadow witness and P.W.9 TLO contradict each other, regarding the trap and seizure therefore, the trial Court erred in holding their testimony corroborates the testimony of P.W.2

(ii). The application for transfer of patta by one son in favour of the mother when two sons along with mother are also entitle for patta, makes the case of the P.W.2 doubtful. The trial Court without appreciating the flaw in the Patta transfer application which was the reason for the accused to refuse the process had believed the tainted evidence of P.W.2.

(iii).The TLO before registering the F.I.R failed to conduct preliminary enquiry about the veracity of the complaint. The application Ex.P.2 does not bear any reference number to believe the case of P.W.2 that, he gave the application to the Tahsildar on 17.11.2003, he in turn forwarded it to Revenue Inspector on 20.11.2003 and from Revenue Inspector it reached VAO



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the accused. Contrary to the office procedure, P.W.2 had deposed that, he collected the application from Tahsildar Office and gave it to the Revenue Inspector and from Revenue Inspector gave it to VAO. The application once received at Tahsildar Office should be assigned with reference number and sent to Revenue Inspector and VAO after making due entry in the registers. No such evidence placed by the prosecution to believe P.W.2 evidence that on 20.11.2003 and 22.11.2003 the accused demanded illegal gratification.

10. The learned Senior Counsel appearing for the appellant submitted that in the Seizure Mahazar Ex.P5, there is no whisper about the demand and acceptance. Further, it is a case of the prosecution that the accused received the tainted money from PW.2 and kept it in his left side shirt front pocket and the same was recovered under the Mahazar. It is further case of the prosecution that the shirt of the accused was seized after giving an alternate shirt. The pocket portion was also subjected to phenolphthalein test. The shirt of the accused is marked as M.O.7. There is a contradiction between the evidence of PW.3 and the evidence of PW.9 Periyasamy, the Trap Laying Officer from where the alternate shirt was provided to the accused. PW.3, Paramasivam, the shadow witness in his cross examination had deposed that the alternate shirt was



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purchased by the police constable on the instruction of the Inspector. He is not

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aware of who gave money for purchasing the alternate shirt. Whereas, PW.9, the Trap Laying Officer had deposed that the alternate shirt was kept with the trap team before proceeding to the trap spot and he is not aware who purchased the alternate shirt and kept in the vigilance office.

11. The learned Government Advocate (Crl.Side) appearing for the State submitted that the defacto complainant, PW.2 Gomethagan had clearly deposed about the application Ex.P2 for transfer of patta, which was given at Tahsildar office, Vazhapadi on 17.11.2003. After making endorsement, PW.5 had given back the application with instructions to handover it to the Revenue Inspector for further action. To avoid delay Ex.P2 was handed over to the applicant [PW.2] himself, this has been explained by PW.5 in his chief examination. Therefore, contended that the absence of reference number in the application is well explained by the prosecution and for that purpose, the case of the prosecution cannot be suspected, when the tainted money of Rs.1,000/- entrusted at the Vigilance and Anti corruption office, Salem to PW.2 on 24.11.2003 between 12.00 hours to 1.30 hours was recovered from the accused at 3.15 p.m., in the VAO office, Kottathupatty. The accused, who had in



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possession of the tainted money, had not given plausible explanation for his legal possession. Therefore, a presumption of demand and acceptance to be drawn. The trial Court, on conspectus evolution of the evidence available on record, had held that the prosecution has proved the factum of demand and acceptance of sum of Rs.1,000/- as illegal gratification by the accused on 24.11.2003 between 3.05 p.m., and 3.15 p.m., at VAO office, Kottathupatty village.

12. Having admitted the application for transfer of patta in the name of his mother, the excuse for delay stated by the accused was that individual patta in the name of his mother cannot be given, only joint patta can be given, that is the reason why the defacto complainant got infuriated. It is unsustainable explanation for motive and that is disproved by the prosecution witness PW.2 in the cross examination. When it was suggested to him that he insisted for individual patta in the name of his mother, which was denied by the accused, the defacto complainant has stated that only with the consent of his brother the application was made and he had no grievance of issuing joint patta in the name of his mother and his brother. PW.2 in his cross examination has also stated that on 20.11.2003 from the Revenue Inspector, he came to know that the patta



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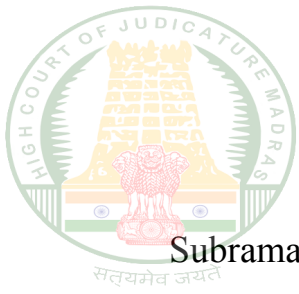
has to be transferred jointly in his name, his brother name and his mother name

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and he has received the joint patta 1½ months after the trap and he has no grievance. The suggestion that PW.2 has attempted to get exclusive patta in the name of his mother, so that he can deprive share of his brother been emphatically denied and therefore, the learned Government Advocate (Crl.Side) submitted that the suggestion put by the accused in the cross examination of PW.2 had not dissolved the case of the prosecution.

13. It is a case of demand and acceptance of illegal gratification. The bribe amount of Rs.1,000/- smeared with the phenolphthalein and marked under the Entrustment Mahazar Ex.P4 was recovered from the accused under Seizure Mahazar Ex.P5. The currency recovered from the accused tallied with the currency number found in the Entrustment Mahazar. In addition, the hands of the accused is tested with the Sodium Carbonate solution. The solution turned red indicates handling of phenolphthalein. The shirt pocket portion where the money was kept by the accused also subjected to the phenolphthalein test and proved positive.

14. The prosecution having proved the foundational fact of demand and acceptance by PW.3 and the scientific evidence. The case of the accused is that



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Subramaniam, father of the defacto complainant died in the month of August

1992 leaving behind his wife Vimala and two sons Gomethagan and Natarajan.

Gomethagan is the defacto complainant, who made the application for transfer of patta in respect of the property held by Subramaniam and his two sons in favour of mother Vimala. This is not possible since the property left by Subramaniam has to be inherited by his wife and two sons equally. The application for change of patta which is marked as Ex.P2 and the legal heirs certificate annexed along with the application disintituled PW.2 for individual patta in the name of his mother and when that was informed to the defacto complainant, he has filed a false complaint and laid the trap. A further case of the defence is that neither on 20.11.2003 at 11.30 a.m., nor on 22.11.2003 at 11.30 a.m, there was meeting of PW.2 and the accused. However, from the evidence of PW.2, the defacto complainant and the evidence of PW.5, the Tahsildar of Vazhapadi, it is evident that the application of PW.2 dated 17.11.2003 was received by PW.5 and on the same day he has made endorsement on the back of application Ex.P2 and handed over it to PW.2, who submitted the application to the Revenue Inspector. The endorsement on the back of Ex.P2 is marked as Ex.P9. PW.4 was the then Birka Revenue Inspector had deposed that Ex.P2 application was received by him from the Tahsildar and



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he perused the application on 20.11.2003, when PW.2 brought the application

to him. He on perusing the application and the annexure informed PW.2 that the property of Subramaniam can be transferred jointly in the name of all his three legal heirs as per the legal heir certificate and proceed with the application after getting report from the VAO, made endorsement in the application for VAO to enquire and submit report. He has identified the endorsement made on the back of Ex.P2 and same is marked as Ex.P8. Therefore, even though there is no reference number on the application from the evidence of the officials, who have dealt the application, had proved the chain of custody and the role in processing the application. Therefore, the absence of reference number in the application has no significance. PW.4 had further stated that on 24.11.2003, the Inspector of Vigilance contacted him and enquired about who is dealing with the application of Gomethagan and he informed to the Inspector of Police, Vigilance and Anti Corruption that the file is with the accused.

15. Regarding the second demand at Panchayat Union Elementary School, the case of the accused is that there was no meeting with the defacto complainant on that day at Panchayat Union Elementary School. The accused



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was not on duty on 22.11.2003 at the Panchayat Union School for affixing

additional sheet in the ration card. There is no proof to show that there was a camp at the school on 22.11.2003 or the accused was present there and PW.2 met him there. It is also the contention of the accused that in a crowded place like camp for affixing additional sheet in the ration card, it is remotely possible for a public servant to openly demand bribe.

16. The trial Court has also found that there is no corroboration for the allegations of second demand on 22.11.2003. However, the third demand on the day of the trap and successful completion of the trap leads to the inference of the previous demand. The third demand and proof of third demand cannot be an inference for the earlier demand unless and until, it is proved beyond doubt. In this case the second demand on 22.11.2003 lacks corroboration, but it does not disprove the case of the prosecution in respect of the demand on 24.11.2003 and the receipt of the same by the accused. The defence taken by the accused that the money was planted in his shirt pocket is not probable, since not only his shirt pocket portion, but both of his hands were found positive for phenolphthalein. Unless and until the accused had received the money and counted it before keeping it in his pocket, it is impossible for both his hands to



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contact phenolphthalein. Neither PW.2 nor PW.3 had any animosity against this

appellant to depose facts which is not true. In spite of incisive cross examination of these two witnesses PW.2 and PW.3, their credibility has not been impeached. Therefore, the evidence of PW.2 corroborated by the eye witness PW.3 for demand and acceptance of Rs.1,000/- on 24.11.2003 during the trap besides scientific proof. Recovery of the tainted money from the possession of the accused proves the case of the prosecution to the core. The trial Court has rightly convicted the appellant. There is no ground to interfere in the judgment of the trial Court.

17. In the result, this Criminal Appeal is dismissed and the trial Court conviction and sentence is confirmed. The trial Court is directed to secure the appellant/accused and commit him to prison to undergo the remaining period of sentence. The period of sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C.

19.09.2023

Index : Yes/No.
Internet : Yes/No.
Speaking order/Non-speaking order

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Copy to:-

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1. The Special Court for trial under the Prevention of Corruption Act, Salem.
2. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Salem District.
3. The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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Pre-Delivery judgment made in
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19.09.2023