

State Rep. by Vs. 1.Tr.C.Vaithilingam

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Court : Chennai

Decided On : Nov-20-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : State Rep. by

Respondent : 1.Tr.C.Vaithilingam

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

20. 11.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD) No.184 of 2012 State rep. by Inspector of Police, Vigilance and Anti-Corruption, Thanjavur, [Crime No.2/2004].. : Appellant/Complainant Vs. 1.Tr.C.Vaithilingam 2.Tr.Shanmugam @ Shanmugavadivel : Respondents/Accused Nos.1&2 Prayer : Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, praying to set aside the judgment of acquittal of the respondents/accused [A-1 and A-2]. passed by the Honourable Special Court for the Cases under Prevention of Corruption Act, Tiruchirapalli in Special Case No.51/2012, dated 12.04.2012, convict the respondents/accused [A-1 & A-2]. for the offences framed against them and pass sentence against them in accordance with law. !For Appellant :: Mr.K.Anbarasan, Government Advocate (Crl.side) ^For Respondents :: Mr.S.Deenadhayalan :

JUDGMENT

Challenging the judgment of acquittal dated 12.04.2012 passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirapalli, in Special Case No.51/2012, the present Criminal Appeal has been preferred by the State.

2. The case of the prosecution is briefly stated as follows: (i) The first respondent C.Vaithilingam was working as Village Administrative Officer at Periyakottai Village, Pattukottai Taluk. The second respondent Shanmugam @ Shanmugavadivel was working as Village Menial. P.W.2 (Sathiyandham) has submitted a petition on 09.10.2003 to transfer the patta which stood in the name of his father to his name. The first respondent, who is the Village Administrative Officer, has demanded a sum of Rs.500/- for changing patta on 14.02.2004 and reiterated his demand also on 17.02.2004 at about 11.00 a.m. (ii) Therefore, P.W.2 lodged Ex.P.5 complaint with P.W.13 Balu, the Inspector of Police, Vigilance and Anti-Corruption, Thanjavur on 17.02.2004 at 05.00 p.m., and on receiving the complaint, P.W.13 registered an F.I.R. (Ex.P.20) in Crime No.2 of 2004 under Section 7 of the Prevention of Corruption Act. (iii) Pursuant to the complaint, trap proceedings have been initiated. On the direction of P.W.13, when P.W.2 and P.W.3 along with police personnel went to the office of the first respondent, it was found locked. On enquiry, they came to know that the first respondent went to attend a Mass Contact Programme at Vikramam Village, which was intimated to P.W.13. Thereafter, they were instructed to meet the first respondent there. On 18.02.2004, while the defacto complainant met the first respondent in the function of Mass Contact Programme held in Panchayat Union Middle School premises at Vikramam Village, he told him that he had brought the amount and two patta pass books, for that, the first respondent directed him to hand over the same to the second respondent. When the same was handed over to the second respondent, in the presence of P.W.3 (Kannan), he had accepted the same, but later, on the advice of the first respondent, the second respondent returned the amount to P.W.2 and instructed him to bring the amount on the next day at the VAO Office. (iv) On the next day, P.W.2 and P.W.3 met the first respondent and told him that he had brought the amount of Rs.500/- along with two patta pass books and the first respondent instructed P.W.2 to hand over the same to the second respondent at about 04.00 p.m., at his residence. Accordingly,

on the same day, at the residence of the second respondent, the second respondent accepted the bribe amount and kept the same in his shirt pocket in the present of witness Kannan (P.W.3). P.W.13 came to his house and arrested him. When he was enquired, he informed to P.W.13 that he received the said amount, as P.W.2 said that the first accused instructed P.W.2 to hand over the same with him and, thereby, both the respondents committed the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. After trap laying proceedings, investigation has been done by P.W.14 and charge sheet has been laid for the offences as stated above. (v) Before the trial Court, on behalf of the prosecution, P.Ws.1 to 14 were examined and Exs.P.1 to P.24 were marked along with M.Os.1 to 4. On completion of the examination of the witnesses on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and they denied the same as false. On behalf of the defence, D.W.1 was examined and Ex.D.1 was marked. (vi) The learned Trial Judge, after considering the oral and documentary evidence, acquitted the respondents on the ground that there is no evidence to show that the application of P.W.2 dated 09.10.2003 has been forwarded to the first respondent and there is no demand from 09.10.2003 to 14.02.2004 and when P.W.2 has gone to the office of the first respondent to hand over the amount, it was found locked and also considering other grounds.

3. Aggrieved over the judgment of acquittal of the respondents, the present appeal has been preferred.

4. The learned Government Advocate (Criminal side) appearing for the State would submit that the amount has been recovered from the second respondent/A-2, who received the amount only on the instruction of the first respondent/A-1. Phenolphthalein test has been ended in positive and that factum has not been considered by the Trial Court. He would further submit that the evidence of P.W.2, the defacto complainant has been corroborated by the evidence of P.W.3 (Kannan) in respect of the second demand and also acceptance. Hence, he prayed for conviction.

5. Resisting the same, the learned counsel for the respondents/accused would submit that there is no evidence for demanding bribe either on 14.02.2004, 17.02.2004 or on 18.02.2004 and also on 19.02.2004. Furthermore, the amount has not been received by the first respondent/A-1 and the second respondent/A-2 received the amount as if it was a property tax due. That has been intimated as soon as they were arrested. The Trial Court has considered the same. Furthermore, according to the prosecution, on 18.02.2004, the amount alleged to be received by the second respondent/A-2 was subsequently handed over to P.W.2, the defacto complainant and on 19.02.2004 only the amount has been alleged to be given. It was not in the office of the first respondent/A-1. Therefore, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

6. Considering the rival submissions made by both sides and on a perusal of the typed-set of papers, it is seen that P.W.2 has given an application to transfer the patta, which stood in the name of his father, to his name on 09.10.2003. Even though P.Ws.4,5,6,7,8,9,10 were examined, they have not stated that the application given by P.W.2 has been forwarded to the first respondent/A-1 for making enquiry. It is also the admitted case that on 09.10.2003 to 14.02.2004, there was no demand from the first respondent/A-1. P.W.2 had never met the first respondent/A-1 in between the period. Only on 14.02.2004, he met the first respondent/A-1. It is the case of prosecution that the first respondent/A-1 demanded a sum of Rs.500/- as bribe. However, it is pertinent to note that the father of P.W.2 died intestate not only leaving behind his son P.W.2 but also another son and widow and daughter as his legal heirs. In such circumstances, as per the evidence of P.W.9, without the consent of the other legal heirs, patta could not be changed in favour of one of the legal heirs. Furthermore, D.W.1 was examined and Ex.D.1 was marked, which shows that P.W.2 has been in arrears in payment of kist to the tune of Rs.1,242.56. As already stated, the first demand dated 14.02.2004 and another demand dated 17.02.2004 have not been proved by the prosecution.

7. Further, P.W.2 has given a complaint on 17.02.2004 at 05.00 p.m., before P.W.13 Balu, the Inspector of Police, Vigilance and Anti-Corruption, Thanjavur.

Then P.W.3 shadow witness and another have been brought and they followed the trap procedure. Considering the evidence of P.Ws.2 and 3, there is no demand on 18.02.2004. Admittedly, on 18.02.2004, when they reached the office of the first respondent/A-1, it was found locked and they made an enquiry and they came to know that Mass Contract Programme is conducted in Panchayat Union Middle School Premises at Vikramam Village. Thereafter, they had gone there and the first respondent/A-1 was in the stage. According to P.W.2, he intimated the fact that he had brought the amount along with two patta pass books, for which, the first respondent/A-1 directed him to hand over the same to the second respondent/A-2. P.W.2 handed over the same to the second respondent/A-2, who in turn, returned back the amount to P.W.2. However, neither the evidence of P.W.2 nor the evidence of P.W.3 shows that the first respondent/A-1 has made the demand and on 19.02.2004 at 01.45 p.m., the amount has been alleged to be given to the second respondent/A-2 at his residence, on the instruction of the first respondent/A-1. However, there is no evidence to show that the first respondent/A-1 has made a demand and, hence, the basic ingredients of Section 7 of the Prevention of Corruption Act that the demand must be proved that too, the second demand before acceptance has to be proved by the prosecution beyond reasonable doubt, are not made out. Acceptance for proving the demand will not be a reason for convicting the accused. Mere acceptance is not sufficient to convict the accused. Furthermore, recovery is also not sufficient to fascinate conviction. Admittedly, neither P.W.2, the defacto complainant nor P.W.3, shadow witness has deposed that either the first respondent/A-1 or the second respondent/A-2 has demanded illegal gratification. P.W.2 himself has voluntarily handed over the patta passbook two in number and also Rs.500/-. Phenolphthalein test has not been conducted immediately. Therefore, at this juncture, it is appropriate to consider the evidence of P.W.3. In his evidence, he had categorically stated that he along with police officials went to the house of the first respondent/A-1 to enquire about the illegal gratification and returned back and only thereafter, phenolphthalein test of the second respondent/A-2 has been conducted. In such circumstances, I am of the view that the Trial Court has correctly found that in the absence of demand and acceptance, phenolphthalein test has not been conducted at the earliest point of time and rightly considered all

the aspects in proper perspective and came to the correct conclusion that the ingredients of Section 7 of the Prevention of Corruption Act have not been proved by the prosecution beyond reasonable doubt, even though the respondents/A-1 and A-2 are public servants and sanction given by P.W.1 was valid in law.

8. At this juncture, it is appropriate to consider the decision in Chinnam Kameswara Rao v. State of A.P. [2013(12) SCC689, wherein at paragraph No.12, it was held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court.

9. A bare reading of the above decision makes the position very clear that once the case was ended in acquittal and if two views are possible, the view favouring the respondents/accused should be taken into consideration. Here, in this case, on perusal of records, this Court found that the Trial Court has given cogent reasons for acquittal and all the points are in favour of the accused. Therefore, I do not find any infirmity or irregularity in the judgment of acquittal passed by the Trial Court. The order impugned in the appeal does not call for any interference at the hands of this Court. Hence, it is, hereby, confirmed and the appeal deserves dismissal and accordingly, dismissed. 20.11.2014 Index:Yes/No Internet:Yes/No SML To 1.The Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirapalli. 2.The Inspector of Police, Vigilance and Anti-Corruption, Thanjavur. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. R.MALA, J.

SML Judgment made in Criminal Appeal (MD) No.184 of 2012 Dated:- 20.11.2014

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