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D. Venkatasan Vs. the State

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Court : Chennai

Decided On : Sep-26-1996

Reported in : 1997CriLJ1287

Judge : N. Arumugham, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 337; Prevention of Corruption Act - Sections 13(1), 13(2) and 19

Appeal No. : Criminal Appeal No. 288 of 1991

Appellant : D. Venkatasan

Respondent : The State

Advocate for Pet/Ap. : C.J. Madanagopal and ;P. Raja Elango, Advs., ;P. Kumaresan, Govt. Adv.

Judgement :
ORDER

:

Whereas Tr. D. Venkatesan (No. 3158/Madras City Police) who was working as O.S. Sub-Inspector of Police, Traffic Investigation Triplicane Range is a public servant;

Whereas it is alleged that Tr. D. Venkatesan, pursuant to the demand made by him on 22-7-89 at his Police Station from Tr. P. P. Augustin, driver of auto rickshaw TMR 599, of sum of Rs. 500/- (Rupees Five Hundred only) which he reduced to Rs. 400/- (Rupees Four Hundred only) as gratification, other than legal remuneration as a motive or reward for not taking action against the said P. P. Augustin, and for favouring him in the case in Traffic Investigation Triplicane Range Cr. No. 3357/89 under S. 337, I.P.C. and S. 116 of Motor Vehicles Act, which was being investigated by the said Tr. D. Venkatesan and in which the said Tr. P. P. Augustin was shown as the accused, accepted a sum of Rs. 150/- (Rupees One Hundred and Fifty only) as part payment on 22-7-89 at about 7 p.m. at the Police Station, and then released Tr. P. P. Augustin on bail.

Whereas it is further alleged that pursuant to the aforementioned demand of Rs. 400/- and in the course of the same transaction, Tr. D. Venkatesan, on 23-7-89 at about 2 p.m., at the Police Station, accepted from the said Tr. P. P. Augustin, another sum of Rs. 150/- (Rupees One Hundred and Fifty only) as part payment and then released to Tr. P. P. Augustin the auto rickshaw TMR 599 and its R.C. Book which he had detained on 22-7-89.

Whereas it is further alleged that pursuant to the aforementioned demand, and in the course of the same transaction, Tr. D. Venkatesan, on 24-7-89 at about 8.30 p.m. near his Police Station, accepted the balance amount of Rs. 100/- (Rupees One Hundred only) from the said Tr. P. P. Augustin for returning his driving licence and for favouring him in the case in Cr. No. 3357/89 of Traffic Investigation - Triplicane Range in which the said P. P. Augustin was shown as the accused.

Whereas it is further alleged that between 22-7-89 and 24-7-89, and in the course of the same transaction, Tr. D. Venkatesan, being a Public Servant as aforesaid, by corrupt or illegal means, and by otherwise abusing his position as public servant, obtained for himself from Tr. P. P. Augustin, a total sum of Rs. 400/- in three instalments as pecuniary advantage in the circumstances stated above.

Whereas the said acts of Tr. D. Venkatesan, formerly Sub-Inspector of Police, Traffic Investigation, Triplicane Range constitute offence under S. 7(3) counts and under S. 13(2) r/w S. 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988

(Central Act No. 49/1988).

Whereas, I Thiru K. K. Rajasekharan Nair, Commissioner of Police, Madras City, being the authority competent to remove the said Tr. D. Venkatesan from his office, after fully and carefully, examining the materials placed before me in regard to the said allegations and circumstances of the case, I am satisfied that the said Tr. D. Venkatesan, should be prosecuted for the offences aforesaid.

Now, therefore, I do hereby accord sanction required under S. 19(1)(c) of the Prevention of Corruption Act, 1988 (Central Act 49/88) for the prosecution of the said Tr. D. Venkatesan, formerly Sub-Inspector of Police, Traffic Investigation, Triplicane Range, Madras, for the said offences and for taking cognizance of the said offence by a Court of Competent Jurisdiction.

(Sd.) ..... Commissioner of Police.'

The conduct of phenolpthalein test and its earlier demonstration, the reference of the recovery mahazar and the report of the chemical examiner and the recovery of the documents by P.W. 13 have not at all been adverted to by the sanctioning authority. It is well settled by the judicial pronouncements that according sanction to prosecute a Government Servant by a Competent Authority under S. 19 of the Prevention of Corruption Act is not a mere mechanical process and an empty formality but it is to be attached with every sacrosanctity in built by the statute itself for the reason that frivolous implications of the public servants, roping in false criminal cases could be avoided and for the said avowed object in mind, legal fiction has been pronounced by the Courts of Law in according sanction for prosecution. The sanctioning authority must apply its mind in full, that would mean that he has to refer all the case records and identify the case and grounds on which the satisfaction was arrived at on the basis of which sanction has to be accorded. Looking Ex. P. 13 on the basis of the above law, I am not inclined to accept the contention of the learned Government Advocate in this regard. Of course, this plea regarding the validity of the sanction order does not appear to have been taken before the trial Court. But while looking into sub-secs.

(3) and

(4) of S. 19 of the present Act, if the Court is satisfied with the failure of justice in non-performing a mandatory obligation on the part of the authority, then the Court is empowered to look into the same and provide the legal redressal to the aggrieved persons. Keeping in view the said principle, for want of legal sanctity, the sanction accorded under Ex. P. 13 cannot at all be considered to be a valid one in law. In this regard, I am fully constrained to endorse my view with the contentions made by C.J. Madanagopal, learned counsel appearing for the appellant and thereby to say, that Ex. P. 13 is not a valid sanction order so as to take it that the prosecution can be successfully launched against the accused. Once the prosecution fails to prove the genuineness of the sanction order and as a consequence thereof, if any failure of justice is identified to any person, then the presumption or the legal bar provided under sub-secs.

(3) and

(4) of S. 19 of the Prevention of Corruption Act will not come and do not stand in any way in the verdict to be given in favour of the accused. Having thus considered the whole gamut of the case, the entire adduced legal evidence, rival contentions and established circumstances, I am fully satisfied to hold that the prosecution has failed in its mission of establishing the guilt of the accused beyond all reasonable doubts and this aspect has been totally overlooked by the trial Court in rendering the impugned judgment and that accordingly, this appeal must be sustained and the impugned judgment is liable to be set aside.

17. In the result, for all the foregoing reasonings and findings, the appeal succeeds and accordingly, it is allowed. The conviction and sentence passed by the learned IXth Additional Special Judge, Madras in C.C. No. 7 of 1990 dated 26-3-1991 is set aside in toto. Consequently, the accused/appellant is hereby acquitted. Fine amount paid, if any, is ordered to be refunded to the appellant/accused immediately.

18. Appeal allowed.

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