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N.M. Rajendran Vs. the State

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Court : Chennai

Decided On : Aug-26-1995

Reported in : 1995CriLJ4195

Judge : N. Arumugham, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 380 and 384; Code of Criminal Procedure (CrPC) , 1973 - Sections 313(1); Prevention of Corruption Act - Sections 6, 7, 10, 11, 13, 13(1), 13(2), 15, 19 and 19(1)

Appeal No. : Criminal Appeal No. 9 of 1993

Appellant : N.M. Rajendran

Respondent : The State

Advocate for Def. : A.N. Rajan, Govt. Adv.

Advocate for Pet/Ap. : G.J. Madanagopal, Adv.

Judgement :
ORDER

Whereas Thiru N. M. Rajendran, who worked as Sub-Inspector of Police (Crimes) J. 1 Saidapet '(Crime) Police Station, Madras-15 is a Public Servant :

Whereas it is alleged that on 17-3-90, in the evening at the house of Thiru Ramasamy son of Muthuswamy, at 21, Appasamy Pillai Lane, Washermanpet,

Madras, Thiru N. M. Rajendran, committed extortion by putting in fear the said Thiru Ramasamy that he would be implicated in a false case for receiving of stolen property and dishonestly induced him to deliver to Thiru N. M. Rajendran a 'Sharp' VCR worth Rs. 4,800/- belonging to the said Ramaswamy.

Whereas it is further alleged that in the course of the same transaction, Thiru N. M. Rajendran, being a public servant pursuant to the demand made by him to the said Thiru Ramasamy on 17-3-80 evening, of a sum of Rs. 3,000/- and to his reducing the demand to Rs. 1,500/- accepted the said sum of Rs. 1,500/- from the said Thiru Ramasamy on 20-3-90 at about 8 p.m. at Hotel Metro 12 Flower street, Anna Salai, Saidapet, Madras, as gratification other than legal remuneration as a motive or reward for not involving the said Ramasamy in a case of receiving of stolen property in connection with a case under investigation by Thiru N. M. Rajendran in J. 1 Saidapet Crime Police Station Crime No. 337/90 u/S. 380, I.P.C.

Whereas it is further alleged that in the course of the same transaction, on 17-3-90 and on 20-3-90 Thiru N. M. Rajendran being a Public Servant, by corrupt and illegal means and by abusing his position as public servant obtained from the said Thiru Ramasamy a valuable thing, to wit, a 'SHARP' VCR worth Rs. 4800/- belonging to him, for being shown falsely as the stolen property recovered in J. 1 Saidapet Crime Police Station Cr. No. 337/90 u/S. 380, I.P.C. in which Dr. C. S. Manonmani, of Madras-35 was the complainant and also obtained for himself the said sum of Rs. 1,500/- as pecuniary advantage in the circumstances stated above.

Whereas the aforesaid acts of Thiru N. M. Rajendran constitute the offence punishable under Section 384, T.I.C. Section 7 and Section 13(2) r/w 13(1)(d)(i) and (ii) of prevention of Corruption Act, 1988, (Central Act 49 of 1988).

'And whereas I Thiru K. K. Rajasekaran Nair, I.I.S. Commissioner of Police, Madras, the authority competent to remove the said Thiru N. M. Rajendran, formerly Sub-Inspector of Police (Crime) J. 1 Saidapet Crime Police Station, Madras-15 from office, after fully and carefully examining the materials placed before me in regard to the said allegations and circumstances of the case, am satisfied that Thiru N. M. Rajendran should be prosecuted for the aforesaid

offence.

Now therefore under Section 19(1)(c) of the Prevention of Corruption Act, 1988 (Central Act, 49 of 1988) I do hereby accord sanction for the prosecution of the said Thiru N. M. Rajendran, Formerly Sub-Inspector of Police (Crimes) J. 1 Saidapet Crime Police Station, Madras-15 for the said offences, and for taking cognizance of the said offence by a Court of Competent Jurisdiction.'

It appears from the perusal of the above Ex.P. 1 that such of the documents and materials placed before him in detail with reference to its date, name and other particulars have not been mentioned. What has been referred to in said Ex.P. 1 was the Directorate Report No. RC No. 26/90/POL/MCI dated 16-11-90 and connected records. From the last three paragraphs of Ex.P. 1, in and by which sanction has been accorded, it is not known as to what the documents he has relied upon and what are all the materials placed before him and what are all the grounds upon which he was satisfied and what are the materials carefully examined by the sanctioning authority, are all totally missing in this Ex.P. 1. In spite of this Court had observed repeatedly in very many number of cases that the exercise of the power by the competent authority under Section 19 of the Act is not only a mandate but also a duty attached with every sacrosanctity in order to give protection to the public servants from not implicating them falsely, I am rather perturbed to see that time and again the observations of the courts of law are not being observed or adhered to by the Officers concerned. However, under the circumstances, enough for me at this stage to hold after having fully considered, that the sanction accorded under Ex.P. 1 in this case against the accused is not valid in law but however has resulted in total failure of justice to the accused as spelt out in the above section of law.

23. It was the endeavor of the learned Government Advocate to refer the following case laws :- For the proposition that to discharge the onus lies upon the accused when the money in question was found in his hands, Union of India v. Dr. J. M. Almedia, 1977 Cri LJ (NOC) 71 Goa was relied on, followed by a case held between Thangaraj v. State by Inspector of Police, 1993 Mad LJ (Cri) 745 wherein, a learned single Judge of this Court has held as follows :-

'It is well settled law that the sanction order need not mention the particulars of all the documents perused by sanctioning authority.'

In Raja Singh v. State, 1995 Cri LJ 955 Mad, a learned single Judge has refered as follows :-

'The Sanctioning Authority should apply its mind to the facts alleged and only after being satisfied that the sanction was a necessity, the sanction order should be signed. In this case, even though the sanctioning authority, who accorded sanction was not examined as a witness, the sanction order gives the details of the records and his statement about perusal of the records before granting sanction. In the sanction order at the top, under the caption 'reference' it was mentioned that detailed investigation report and connected records were placed before him. Therefore, the detailed investigation report and the connected records were sent to the sanctioning authority for his perusal. The said authority has stated in his order that he, after fully and carefully examining the materials placed before him with regard to the allegations and the circumstances of the case, was satisfied that this appellant should be prosecuted in Court of law.'

Lastly, a case law held between M. W. Mohiuddin v. State of Maharashtra, 1955 SCC (Cri) 545 was relied on by the learned Government Advocate, Supreme Court has discussed and confined the scope of the legal concept 'obtains the pecuniary advantage' in this case. In the context of the 'competent authority' defined under Section 19 of the Prevention of Corruption Act, 1988, before the learned single Judges of this Court, in the case laws referred to above, a reading of the reported cases, clinches the fact that the above said facts were not canvassed even on the basis of clause (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988, and perhaps that was the reason why the learned Judges, with great respect, have not adverted their mind to the basis ingredients to be taken note of as spelt out by the earlier Supreme Court decisions. Nevertheless, for all the reasonings given above, since I had the occasion to consider the scope and object of sanction accorded either under Section 6 of the Old Act or under Section 19 of the New Act, I had observed the law to be made applicable in this case is as was held in Charles Walker Devadas v. State by The Inspector of

Police, 1993 Mad LW (Cri) 346. For the said reasons, after having thus considered, in am constrained to hold that there was no valid sanction accorded by the Commissioner of Police in this case and what has been granted him is not valid in law and that therefore, the whole prosecution case is vitiated. Lastly, M.O. 2 was seen to have been recovered from P.W. 2 by the accused/appellant as spoken to by P.W. 2 and D.W. 1 and corroborated by P.W. 11 till it was recovered by P.W. 16 at about 11 p.m. on 20-3-1990 at Saidapet Police Station under the cover of Mahazar attested by P.W. 4 and P.W. 5. This fact would show clearly that the defence theory and explanation projected by and on behalf of the accused was true and as such, it is convincing and can be accepted. Even otherwise, the prosecution has not provided any interaction between the recovery of a 'SHARP' mark VCR instead of a 'FUNAI' VCP for the reasons that it was nobody's complaint that a 'SHARP' VCR has been taken away and accordingly it has been recovered and kept in the Police Station unlawfully by the accused/appellant. Therefore, having considered the whole gamut of this case and the legal evidence adduced with all the materials, I am of the firm view that the prosecution has not only failed to prove the guilt of the accused beyond the realm of doubt even for the offence under Section 384, I.P.C. but also for the offences under the Prevention of Corruption Act and thus the prosecution seems to have deliberately failed to establish the guilt of the accused. It is also possible to have the phenolpthalein test demonstrated with the currencies recovered in the presence of P.Ws. 3 and 5. But however, that does not mean, that M.O. 1 series was the bribe money obtained by the accused as clearly spelt out under the Act. It is therefore, under the above context and established circumstances and for all the reasonings aforesaid, I have totally endorsed my view with the submissions made by the learned counsel for the appellant and I am not able to countenance the strenuous contentions advanced by the learned Government Advocate.

24. In the result, the appeal succeeds. Consequently, the Judgment of conviction and sentence recorded by the learned Sessions Judge, Madras in C.C. No. 1 of 1991 dated 18-12-1992 is set aside. Fine amount if any paid already by the accused/appellant is ordered to be refunded to him immediately.

25. Appeal allowed.

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