

**Thangaraju Vs. State**

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**Court :** Chennai

**Decided On :** Sep-06-2001

**Reported in :** 2002CriLJ189

**Judge :** M. Karpagavinyagam, J.

**Acts :** Prevention of the Corruption Act, 1947 - Sections 5(1) and 5(2); Indian Penal Code (IPC) - Sections 161; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Crl. Appeal No. 359 of 1992

**Appellant :** Thangaraju

**Respondent :** State

**Advocate for Def. :** O. Srinath, G.A.

**Advocate for Pet/Ap. :** R. Karunakaran Vedanayagam, Adv.

**Judgement :**

**M. Karpagavinyagam, J.**

1. Challenging the conviction for the offences under Section 161, I.P.C. and Section 5(1)(d) read with 5(2) of the Prevention of the Corruption Act, 1947 and sentence to undergo S.I. for one year and to pay a fine of Rs. 500/-, in default to

undergo S.I. for three months, Thangaraju, Village Administrative Officer, has filed this appeal before this Court.

2. According to the prosecution, the appellant, Village Administrative Officer of Pasar Village, Kallakurichi Taluk, demanded on 2-3-1988 Rs. 300/- from one Kesavan of Ariyanthakka Village (P.W. 1) as a gratification in order to prepare and furnish to him the copies of the Chitta, Adangal and Sketches and accepted a sum of Rs. 50/- on 3-3-1988 and the balance of Rs. 250/- on 9-3-1988.

3. The facts leading to the conviction are as follows :

(a) Kesavan (P.W. 1) was working as a Driver in Periyar Transport Corporation. He was owning lands at Ariyanthakka village. In his two lands, two wells situate separately. He applied to the Electricity Board for getting separate service connection for the wells. On 29-2-1988, P.W. 1 Kesavan received notice from Electricity Board asking him to collect the Chitta, Adangal and Sketches of the lands. On the very same date, Kesavan (P.W. 1) and his friend Palani (P.W. 2) approached the V.A.O., the accused and requested for the certificate along with the documents such as Chitta and Adangal. At that time, he demanded Rs. 300/-. P.W. 1 told him that he would come next day morning to give the money.

(b) Next day, P.W. 1 went and gave Rs. 50/-. The accused demanded the balance of Rs. 250/-. P.W. 1 said that he would give the balance next day. On that date, he only filled up only one set of documents to be given to the Taluk Office and handed over the same to P.W. 1. He asked him to come with the balance money and collect the other documents to be given to the Electricity Board, With those documents, on 3-3-1988 he went to the Taluk Office and obtained the property certificate Ex. P3 from Revenue Inspector.

(c) Again on several occasions, he approached the appellant/accused. He did not hand over the other documents. On 7-3-1988 he filled up the other documents and handed over the same to P.W. 1. P.W. 1 gave Rs, 50/-. But, the accused refused to receive the same. In Chitta, though there was seal, no signature was put. In Adangal, seal alone was put and there was no signature. He asked P.W. 1 to give the balance amount of Rs. 250/- and get the signature and seal in those

documents.

(d) Since P.W. 1 did not incline to give further amount, he took Palani (P.W. 2) and went to Vigilance Office at Cuddalore. P.W. 13, the Inspector of Police, Vigilance, Cuddalore received complaint Ex. P8 from P.W. 1. After obtaining permission from the senior officers, he registered the case for the offence under Section 161, I.P.C. Then, he requested two officers viz., P.W. 11 Gnanasekaran, the Agricultural Officer and one Muralidharan, Junior Assistant in the Assistant Commissioner of Commercial Tax Office to assist the trap. Both these officers came to Vigilance Office. Then, P.Ws. 1 and 2 were introduced and the complaint also was read over to them, P.W. 1 brought Rs. 250/- to give as bribe to the accused. Those currency notes were smeared with phenolphthalein powder. Then, demonstration test was conducted. The significance of the test was explained to the official witnesses. The Mahazar Ex. P9 was prepared.

(e) From Cuddalore, they started at 1.30 p.m. They reached Rishlvandiyam at about 3.45 p.m. P.Ws. 1 and 2 were asked to go to the house of the accused. Within a few minutes, they came back and told them that they were asked to come back in the evening, since the Tahsildar was visiting the office. Then, at about 8.00 p.m., P.Ws. 1 and 2 went to the house of the accused. At that time, the accused was writing something in his house. Kannu, the Thalaiyari (P.W. 4) also was present along with the accused. At that time, P.W. 3 Swaminathan, who is the local villager, also was present there in order to get a certificate from the V.A.O. At that time, the accused demanded money from P. W. 1. Then, P.W. 1 took out the money and gave it to the accused. But, the accused insisted him to hand over the same to P.W. 4. Accordingly, money was handed over to P.W. 4 Kannu, the Thalaiyari. He counted the currency notes and told the accused that it' was 250/- rupees. When P.W. 4 attempted to give the amount to the accused, he asked P.W. 4 to keep the money with himself for some time and he would get it later. So, P.W. 4 kept the money in his side pocket of his banian. Then, the accused received the Chitta, Adangal documents from P.W. 1 and put his signature and seal and the date as 7-3-1988.

(f) Thereafter, P.Ws. 1 and 2 came out and reached the place where P.W. 13 was waiting. He informed about what happened. Then, P.W. 13 and other officials including P.W. 11 went to the house of the accused and introduced themselves to him. At that time, P.W. 4 Kannu was about to move from the place, but he was stopped. Then, the accused was interrogated. He said that the amount was received by P.W. 4. P.W. 4 was examined. He told the Police that only at the instance of the accused, he received the money. Both of them were found perplexed. Then, P.W. 4 was asked to hand over the money, He took out the money from side pocket and handed over the same to P.W. 13. When it was compared with the Mahazar Ex. P9, the numbers were found to be tallied. Then, test was conducted on both the hands of P.W. 4 and the same proved positive. His banian also was tested and the same also proved positive. Then, both P.W. 4 and the accused were arrested, Ex. P10 is the Mahazar for recovery of the amount and the phenolphthalein test conducted. Then, the house was searched under Ex. P20. The witnesses found available in the scene were also examined. Both the accused and P.W. 4 were taken to the Vigilance Office and released on bail.

(g) During the course of investigation, it was found that P.W. 4 was not a party to the demand of bribe made by the accused. Therefore, P.W. 13 sent a report along with the documents to the sanctioning authority. After getting sanction Ex. P16, P.W. 13 filed the charge-sheet against the accused.

(h) During the course of trial, P.Ws. 1 and to 13 were examined, Exs. P1 and P26 were filed and M.Os. 1 to 4 were marked.

(i) After the prosecution case was over, when the appellant was examined with reference to the statements made by the prosecution witnesses, he stated that he had never demanded the money nor instructed P.W. 4 to receive the money on his behalf and on 9-3-1988 while he was going to his office centre, P.W. 1 came and picked up quarrel with him in the presence of other V.A.Os. and public compelling him to sign in his documents and, therefore, he signed and as such, he has never committed any offence. On the side of the defence, D.Ws. 1 to 3 were examined and Exs.. D1 to D6 were marked. The accused examined himself as D.W. 3.

(j) The trial Court considered the materials placed by both the parties and the submissions made by the counsel and concluded that the offence was made out and accordingly, convicted the appellant for the offences under Section 161, I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Hence, the appeal.

4. Mr. R. Karunakaran Vedanayagam, the learned Counsel would make the following contentions, while assailing the Judgment impugned :

The materials placed by the prosecution would not be enough to hold that the money was demanded as bribe for showing favour to P.W. 1 and in pursuance of the said demand, he received the amount through P.W. 4. P.W. 4 was set up by P.W. 1 in order to foist a false case against, the appellant. P.W. 4 himself would admit that he told the Police Officer at the time of trap on 9-3-1988 that the accused did not ask him to receive the money on his behalf and he himself received it. Only on 12-7-1988 he gave a statement to P.W. 13 that he was Instructed by the accused to receive the money and he had no complicity in the demand and receipt of the money as bribe. P.W. 13, the Inspector of Police admitted that he obtained two statements from P.W. 4 on 9-3-1988 and 12-7-1988. But, P.W. 8, the sanctioning authority specifically admitted that he did not receive those two statements recorded from P.W. 4 by P.W. 13. When these contradictory statements given by P.W. 4 were not placed before P.W. 8, the Revenue Divisional Officer, Virudhachalam, the sanctioning authority, the sanction granted by him on the basis of other documents is not valid. Furthermore, the evidence of D.Ws. 1 to 3 would show that no such occurrence had taken place. On these grounds, the accused is liable to be acquitted.

5. The learned Government Advocate would contend justifying the reasonings given by the trial Court imposing the conviction and sentence upon the appellant.

6. I have considered the above submissions and perused the records.

7. It is the prosecution case that the appellant demanded money on 2-3-1988 from Kesavan (P.W. 2) as a bribe for preparing and furnishing the copies of Chitta, Adangal and Sketches relating to the lands of P.W. 1 in order to obtain electricity

service connection for his wells from the Electricity Board. As regards this demand, the prosecution produced P.Ws. 1 and 2, who speak about the same. According to P.W. 1, he received a notice Ex. P18 from the Board asking him to collect the Chitta and Adangal copies and the property certificate from the official concerned and on receipt of the same, he approached the appellant on the same date and showed the notice. He was asked to come on next day. Again, he was asked to come on some other day. So, on 2-3-1988, P.Ws. 1 and 2 went there and on that, the appellant filled up the Chitta and Adangal forms. After filling up the two sets of forms, the appellant demanded Rs. 100/- as bribe. P.W. 1 said that he would come on next day with the money. The evidence of P.W. 1 has been corroborated by P.W. 2 also.

8. Then, on 8-3-1988, P.W. 1 alone went and gave Rs, 50/-. Though the accused received the same, he handed over one set of documents to P.W. 1 intended to be given to the Taluk Office alone. The accused said that P.W. 1 could collect other documents to be given to the Electricity Board after handing over the balance amount. In that situation, P.W. 1 approached Revenue Inspector (P.W. 6) and showed the certificate Ex. P14. P.W. 6 obtained Ex. D1 statement from P.W. 1 and Ex. P13 statement from the accused and sent Ex. D2 report recommending for the property certificate. Ex. P3 is the requisition given by P.W. 1 on 3-3-1988 on the basis of Ex. P4 series, the documents handed over by the accused to P.W, 1. So, from this, it is clear that the accused gave one set of documents to be given to the Taluk Office for getting property certificate only after receipt of Rs. 50/-.

9. Though the oral evidence of P.W. 1 with regard to receipt of Rs. 50/- by the accused on 3-3-1988 has not been corroborated by any other witness, the evidence of P.W. 1 can be believed with regard to the receipt of Rs. 50/- by the accused, in view of the fact that his oral evidence has been corroborated by the other exhibits referred to above. Furthermore, this is mentioned in the complaint Ex. P8 given by P.W. 1.

10. Again, P.W. 1 went to the house of the accused on several dates in order to get the other documents which were to be given to the Electricity Board. On 7-3-1988 he went to his house with Rs. 50/-. The accused asked him whether he

brought the money. P.W. 1 said 'yes.' Then, he handed over the other forms to P.W. 1. P.W. 1 took out Rs. 50/- and gave it to him. The accused said that he would not receive it unless the entire balance money is given. He also told him that in Chitta, he has put only signature and not seal and in Adangal, he has put seal only. He further said that P.W. 1 can get the seal and signature in those documents after paying the balance amount.

11. At this juncture, P.W. 1 decided not to give any more money to him and went to P.W. 2 and took him to P.W. 13, the Inspector of Police, Vigilance on 9-3-1988. On the basis of the complaint Ex. P8 given by P.W. 1, P.W. 13 registered the case under Section 161, I.P.C. Then, entrustment Mahazar Ex. P9 was prepared in the presence of Agricultural Officer and another officer and on the same day evening, the officials, P.Ws. 1 and 2 all went to Rshivandiyam where the house of the V.A.O. is situated. Since Tahsildar had to inspect the office in the evening, P.Ws. 1 and 2 were asked by the accused to come later.

12. Accordingly, P.Ws. 1 and 2 went to the house of the accused at 8.00 p.m. This time, he asked whether he had brought the money. Then, P.W. 1 removed the currency notes of Rs. 250/- and gave it to the accused. He instructed P.W. 4, the Thalayiari, who was standing there, to receive the amount and count it. P.W. 4 received the money and counted the same and told the accused that it was Rs. 250/-. Then, the accused received the other documents from P.W. 1 and put his signature and seal and handed over the same to P.W. 1. In the meantime, P.W. 4 attempted to hand over the money to the accused, who in turn, asked him to keep it for some time and he would receive it later.

13. Thereafter, P.Ws. 1 and 2 came outside and informed P.W. 13 as to what happened. Then, P.W. 13 along with P.W. 11, P.W. 1 and P.W. 2 and other party went to the house of the accused. P.W. 13 introduced themselves to the accused and P.W. 4. At that time, P.W. 4 was about to move, but he was stopped. Then, the accused was interrogated. He told that P.W. 4 received the amount from P.W. 1. P.W. 4 also told P.W. 13 that at the instruction of the accused, he received the amount. Then, phenolphthalein test was conducted on the hands as well as the banian pocket of P.W. 4, which proved positive. The Mahazar Ex. P10 was

prepared. Then, both were arrested and subsequently taken to the office from where they were released.

14. This aspect of the evidence has been spoken to by P.W. 1, P.W. 2, P.W. 3, P.W. 4, P.W. 11 and P.W. 13. The evidence relating to the handing over of the documents without seal and signature on 7-3-1988 and then putting the seal and signature on 9-3-1988 and handing over of the same to P.W. 1 has not been disputed by the accused.

15. According to the prosecution through P.W. 1, the balance amount of Rs. 250/- was demanded for putting his signature and seal in the documents. When the complaint Ex. P8 was given by P.W. 1 to P.W. 13, he stated in the complaint regarding the same and he also produced the said documents one of which contained signature without seal and another of which contained seal without signature. Then, after trap was over, the said documents were produced by P.W. 1 to P.W. 13, namely Ex. P11 series. Those two documents were found to contain both the seal and signature. Therefore, it is clear that on 9-3-1988 at about 8.30 p.m. the accused received those documents, namely Chitta and Adangal and put his signature and seal and handed over the same to P.W. 1 only after receipt of Rs. 250/- through P.W. 4.

16. In the cross-examination of P.Ws. 1 and 2, nothing was elicited to indicate that they speak falsehood against the appellant. In the same way, P.W. 11, the official trap witness and P.W. 13, the Inspector of Police would clearly speak about the recovery of the money from P.W. 4, who said to the Inspector of Police at the time of trap that only at the instruction of the accused, he received the money from P.W. 1.

17. It is contended that P.Ws. 1 and 2 belong to different villages and, therefore, their evidence cannot be given due importance. This contention cannot be accepted, in view of the fact that the entire case of the prosecution has been accepted by the accused in regard to the handing over of the documents marked in this case by the accused to P.W. 1.

18. Apart from that, yet another important evidence is available in this case through P.W. 3 Swaminathan. P.W. 3 was present in the house of the accused while the trap was laid. The accused himself would admit the presence of P.W. 3 at the time of trap. P.W. 3 belongs to Rishivandiyam to which the accused also belongs. According to him, P.W. 1 came there and handed over some papers and on receipt of the said papers, the accused asked P.W. 1 as to whether he brought the money and when P.W. 1 gave the money, he instructed P.W. 4 to receive the money and count it and accordingly, P.W. 4 did the same and on the further direction of the accused, P.W. 4, the Thalairyari himself kept the money by putting in his pocket and thereafter, the accused put the seal and signature in the documents and handed over the same to P.W. 1. He would further state that at the time of the interrogation by the Police Officer, the accused said that the money is with P.W. 4 and P.W. 4 removed the money from his pocket and handed over the same to P.W. 13. His evidence has been clearly corroborated by P.W. 11, who is an official witness. His evidence would fully corroborate the evidence of P.Ws. 1 and 2 with regard to the demand and receipt of the money by the accused through P.W. 4.

19. Furthermore, regarding the conversation between the accused and P.W. 1, as spoken to by P.W. 3, the official trap witness, there is a clear corroboration of P.W. 13, the Inspector of Police. Ex. P10 also would give the clear details as spoken to by the witnesses P.W. 3, P.W. 11 and P.W. 13.

20. These things would make it clear that there are sufficient materials to show that the amount was received by the accused through P.W. 4 as bribe for giving the Chitta and Adangal extracts and Sketches to enable P.W. 1 to get electricity service connection from the Electricity Board.

21. The learned Counsel would mainly argue that the sanction is not valid, in view of the fact that P.W. 4, admittedly, had given contradictory statements, one at the time of trap and another long subsequent to the date of trap and those statements were not placed before the sanctioning authority for proper perusal.

22. Though this submission seems to have some force, a thorough scrutiny of the records would make it clear that this submission lacks substance. No doubt, it is

true that P.W. 13 in his evidence would admit that he obtained statement from P.W. 4 on 9-3-1988 before he was released from the office and another statement on 12-7-1988. It is also not disputed that P.W. 8, the sanctioning authority would admit that in the report submitted by the Inspector of Police requesting sanction, there is no mention about the two contradictory statements given by P.W. 4 Kannu before the Inspector of Police. But, the perusal of the entire deposition of P.W. 13 would make it obvious that P.W. 13 would never state these two statements obtained on 9-3-1988 and 12-7-1988 were mutually contradictory.

23. The thing is, P.W. 13 would state that he obtained a statement on 9-3-1988 from P.W. 4, while he was in custody as an accused and after verification that P.W. 4 was not a party to the offence committed by the appellant, he obtained another statement on 12-7-1988 from him as a witness. Therefore, it cannot be stated that there were two contradictory statements obtained from P.W. 4 Kannu, which were not placed before the sanctioning authority.

24. It is pointed out by the counsel for the appellant that P.W. 4 would state in the chief examination that he initially said to P.W. 13 that he received the money from P.W. 1 on his own and not on the instruction of the accused and the said statement was recorded by P.W. 13.

25. The whole reading of the evidence of P.W. 4 would reveal that P.W. 4 initially was reluctant to tell the truth, in view of the signal given by the accused to P.W. 4 not to tell the truth. However, it may not be correct to state that the said statement was recorded by P.W. 13, while the mahazar was prepared. In the mahazar Ex. P10, it has been specifically mentioned that P.W. 4 told the Inspector of Police that on the instruction of the accused, he received the money on his behalf. Furthermore, there is no suggestion put either to P.W. 3 or P.W. 11, the trap witness or to P.W. 13 to the effect that P.W. 4 gave a statement to P.W. 13 that he received the amount from P.W. 1 on his own. Therefore, it cannot be stated that P.W. 4 gave two contradictory statements.

26. In this connection, the learned Counsel for the appellant would cite two authorities, namely 1996 Cri LJ 119 (Ayyasamy v. State) and 1992 Mad LW 582 (Periyasamy v. Inspector, Vigilance and Anti-Corruption, Tiruchirappalli), in order

to show that the failure to place the relevant materials before the sanctioning authority would make the sanction invalid.

27. In these decisions, the judgment of the Apex Court reported in (Mohd. Iqbal Ahmed v. State of Andhra Pradesh) has been referred to. According to this judgment, it is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it.

28. In the light of the above principles, if we look at the present facts of the case, the sanction in this case has been granted by P.W. 8 only after having gone through the entire report containing the statement and other things and satisfying himself. P.W. 8 would state as follows :

I went through report thoroughly and carefully. That report contains statement of witnesses and statement of accused, details of documentary evidence and also the facts of the case. I perused the report, statement of witnesses and the statement of the accused and details of documentary evidence and other facts mentioned in the report and on the subjective satisfaction I accorded sanction for prosecution.

29. This shows that P.W. 8 has gone through the statement of the accused as well as the statements of the witnesses and then granted sanction after proper application of mind. Under those circumstances, the ground regarding the invalidity of the sanction would not stand.

30. In this case, the accused made an attempt to give some explanation. While he was questioned under Section 313, Cr. P.C. he stated that on 9-3-1988, when he was proceeding towards the centre, P.W. 1 picked up quarrel with him and compelled him to issue Chitta and Adangal and created a scene in the presence of public and the V.A.Os. and in order to avoid the ugly scene, he put the signatures

in the documents and gave them to P.W. 1. He would further state that he never demanded the money nor instructed P.W. 4 to receive the money.

31. However, this statement of the accused given during the questioning under Section 313, Cr. P.C. had not been suggested to any of the prosecution witnesses. On the side of the defence, three witnesses were examined. D.W. 1 is the wife of the accused. She stated that there was a quarrel between P.W. 1 and the accused on 9-3-1988 in front of their house in the presence of the public and the other V.A.Os. This is quite contradictory to the statement of the accused. D.W. 2, another V.A.O. would state that on the date of trap, P.W. 1 called P.W. 4 Kannu who was standing opposite to the house of the accused and gave something to him and in turn, he received the same and kept in his pocket. But, this was not the case of the defence suggested to the prosecution witnesses. D.W. 2 also would state that he never gave a written report to the Tahsildar. D.W. 3 is the accused himself. In this deposition, he never referred about any incident which took place on 9-3-1988. On the other hand, in his statement under Section 313, Cr. P.C, he admitted that on 9-3-1988, he received the papers from P.W. 1 and put. his signature and seal and gave back the same to P.W. 1. Therefore, the defence is not only inconsistent but also quite improbable.

32. Under those circumstances, I do not find any merit in the contentions urged by the counsel for the appellant. Therefore, the conviction imposed upon the appellant by the trial Court is confirmed.

33. In regard to the sentence, the trial Court imposed S.I. for one year and a fine of Rs. 500/-, in default to undergo S.I. for three months. Section 5(2), the penal section would provide minimum one year imprisonment with fine. Under the Act, 1947, the proviso has provided the discretion to the Court to reduce the said minimum imprisonment of one year, if any special reasons are available.

34. In this case, the appellant has already been facing the trial as well as the appeal proceedings from the year 1988. It is also to be noted that due to the conviction imposed upon him, the appellant would lose his job, Taking these things into consideration, it would be appropriate to impose simple imprisonment for six months and to pay a fine of Rs. 1,000/-, in default to undergo S.I. for three months.

35. With the above modification in the sentence alone, the appeal is dismissed. The trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence.

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