

P. Palraj Vs. State Rep. by

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Court : Chennai

Decided On : Jun-15-2012

Judge : S.Palanivelu, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13 (2), 13(1)(D); [Code of Criminal Procedure\(CrPC\) 1973](#) - Section 374(2), 313, 162; Indian Evidence Act - Section 27

Appeal No. : Criminal Appeal(MD)No.246 of 2008

Appellant : P. Palraj

Respondent : State Rep. by

Advocate for Def. : Mr.P. Kandasamy, Adv.

Advocate for Pet/Ap. : Mr.V. Kadirvelu, Adv.

Judgement :

PRAYER

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in Spl.Case No.1/2004 by the learned Chief Judicial Magistrate, Thoothukudi dated 12.05.2008.

JUDGMENT

1. This appeal challenges the order of conviction convicting the accused under Section 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 and sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- in default to undergo R.I. for six months under Section 13(2) r/w 13(1)(d) of P.C. Act., in Special Case No.1/2004 on the file of the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Thoothukudi, dated 12.05.2012. No separate sentence is imposed under Section 7 of P.C. Act, No separate sentence is imposed under Section 7 of P.C. Act.

2. The following is the case of prosecution sans unnecessary particulars:

2.(a) One Veeralakshmiammal is owner of Survey No.223/2 in Patta No.503 measuring 6.34 Acres situate in Aalampatti village, Inam Maniyachi Panchayat, Kovilpatti Village. Her son is P.W.2. He gave Ex.P.2 request on 17.9.2002 to the Tahsildar, Kovilpatti to measure and demarcate the boundaries for which he had remitted a sum of Rs.140/- under challan Ex.P.3. P.W.2 pursued the process. He gave Exs.P.2 and P.3 to the Surveyor in the Taluk Office viz., accused, requesting him to fix the boundaries for which he replied that the properties of others have also been measured and the sub-division was pending. He further asked P.W.2 to drop Exs.P2 and P3 into the box in Taluk Office and P.W.2 did so. Then 2 or 3 times P.W.2 requested the accused to come and measure, but he was dragging on.

2.(b) On 1.10.2002 at about 12.30 p.m., when P.W.2 met accused in Taluk Office, the accused demanded Rs.15,000/- as bribe and P.W.2 replied that he could not pay that much of amount. Left with no option, P.W.2 asked him when he should bring the money, for which he replied that whenever he decided he might bring the money and immediately the land would be measured. P.W.2 came to his house and thought that there was no necessity for him to pay illegal gratification to the accused for a duty to be legally performed and hence he decided to lodge complaint with Anti Corruption Police. He took Rs.10,000/- and came to the respondent police and gave Ex.P.4 complaint with the Inspector of Police P.W.7 on 3.10.2002 at 2.00 p.m. since 2.10.2002 happened to be a holiday.

2.(c) A case was registered and P.W.7 lodged F.I.R Ex.P.24 and sent F.I.R and complaint to the Court and copies to his superiors. He examined P.W.2 and recorded his statement. He gave requisition to the Deputy Director of Animal Husbandry Department and Assistant Divisional Engineer of Highways to send official either belonging to B or C Group. P.W.3 by name Subbiah and another one by name Santhanam came to the office. They were introduced to P.W.2. Both witnesses were asked to go through F.I.R and ascertain facts with P.W.2. P.W.2 produced Rs.10,000/- on the table along with copies of Exs.P.2 and P.3. As per request, P.W.3 took Rs.10,000/- and counted it. P.W.7 asked police constable Paramasivam to prepare sodium carbonate solution in a glass tumbler. He did so. P.W.4 asked P.W.3 to dip his fingers of both hands into the solution. On doing so, there was no change in colour. Paramasivam was directed to apply phenolphthalein powder on both sides of the currencies of Rs.10,000/-. As per request of P.W.7, P.W.3 counted the tainted notes and placed on the table. P.W.7 asked P.W.3 to dip his right hand fingers into the sodium carbonate solution and on doing so, solution turned pink colour. Then he was also directed to dip his left hand fingers. On doing so, it turned pink colour. P.W.7 explained the importance of the phenolphthalein test to the witnesses.

2.(d) He asked P.W.2 to take Rs.10000/- and keep in his pocket. He also told him to meet the accused in the evening of the day either in his office or where he was available and at that time if the accused demanded money, he might give the amount to him and if the accused received the amount P.W.2 had to leave the place and show the signal of rubbing his head two times by means of his left hand, if it were day time and to lit match sticks two times, if it were night time. He also asked P.W.3 to accompany P.W.2 and to watch the events. He directed the solution to be destroyed. They also washed their hands. He further prepared Mahazar Ex.P.6 narrating the above said events in which P.Ws.2, 3 and Santhanam signed.

2.(e) At about 4.40 p.m. all of them left the office in the office jeep with Regn. No.TSD 9234 to the office where the accused was working. On reaching the place, both P.W.2 and P.W.3 proceeded to the office of the accused. P.W.7, his police party and another witness Santhanam were waiting in a hidden place and

watching. P.W.2 entered into the office of the accused and came out after some time. P.W.2 told P.W.7 that the accused was not available and he was expected after half-an-hour.

2.(f) Then all of them boarded the jeep and stopped the vehicle near Government Hostel for Backward Community students and waited there. At about 6.45 p.m. they again went to the office of the accused and both P.Ws.2 and 3 went to the office of the accused.

2.(g) They came out from the office of the accused after 5 minutes and after 5 minutes, the accused also came out from the office and the accused and P.Ws.2 and 3 came to a tea shop belonging to one Krishnaswamy P.W.5, which was 200 feet away from the accused office, where petromax light was burning. P.W.2 tendered the tainted money to the accused who got it by his right hand and gave it to P.W.5 and P.W.5 counted the amount by his two hands. P.W.2 left the tea shop and showed the pre-arranged signal of litting the match stick for two times at about 7.10 p.m. Immediately P.W.7 and his party with Santhanam proceeded to the tea shop. P.W.2 identified the accused and left the place. P.W.7 introduced himself and two witnesses to him and the accused became nervous. P.W.7 prepared sodium carbonate solution in a glass tumbler and asked the accused to dip his right hand in that. On doing so, it was turned pink colour. P.W.7 collected the sample of solution in a bottle and pasted a label with particulars in which he and both the witnesses signed. He also prepared sodium carbonate solution in another glass tumbler and asked the accused to dip his left hand fingers. He did so. But there was no change in colour. P.W.7 also collected the sample in a glass tumbler pasted label with particulars and also signed in the above manner.

2.(h) The accused told him that he gave the money to P.W.5 and he was having that amount. He asked Santhanam to compare the serial numbers of the said currency notes with the serial numbers in the Mahazar Ex.P.6. M.O.1 series are 5 number of 1000 rupees denomination and M.O.2 series are 10 number of 500 rupees denomination. P.W.7 again prepared sodium carbonate solution in a glass tumbler and asked P.W.5 to dip his right hand fingers. He did so and the solution turned to pink colour. The sample was collected and packed by P.W.7 and the

label was signed as above, which is M.O.5. In another glass, he prepared sodium carbonate solution and P.W.5 dipped his left hand fingers as directed by P.W.7. It turned to pink colour. The sample was packed in the same manner as mentioned above.

2.(i) Concerned file was seized from the office of the accused by P.W.7. He also seized another file pertaining to Ganapathy Ammal. Ex.P.11 was seized which is diary maintained by the accused. He again brought the accused to the tea shop of P.W.5 and asked him whether he was having any transaction with the tea shop for which he told that he was maintaining a note book for the consumables purchased by accused from his shop. He also recovered the same. He prepared Rough Sketch Ex.P.25 and Observation Mahazar Ex.P.7. He arrested the accused at 9.45 p.m.

2.(j) He made search of the house of the accused on prior intimation to the Court and seized Rs.10000/- which is with Karur Vysya Bank seal, containing 100 rupees notes of 100 in number. He also prepared a search list Ex.P.8. He sent the accused for judicial custody and the case properties along with Alteration Report Ex.P.27. The accused gave inconsistent version with regard to the source of Rs.10000/- recovered from his house. M.O.7 series are the said currencies. He was examined by the investigating officer P.W.16, the Inspector of Police.

2.(k) P.W.16 examined all the witnesses and recorded their statements. On completion of the investigation, he laid charge sheet against the accused.

3. After the prosecution evidence was over, the accused was examined under Section 313 Cr.P.C. as regards the incriminating materials available against him in the prosecution evidence. He denied complicity to the offences. He filed a statement under Section 313 Cr.P.C. in which it is stated that P.W.2 and D.W.1 are real estate brokers, that for the sake of business they came to his office often, that in the transaction between D.W.1 and P.W.2, P.W.2 had to pay Rs.25,000/- to D.W.1, that he requested P.W.2 to settle the issue in an amicable manner, that on 3.10.2002 at about 6.45 p.m. while he was in P.W.5 tea stall, P.W.2 came and paid him Rs.10,000/- towards the part commission amount due to Thangaraj and he received and handed over it to P.W.5 saying to hand over the amount to broker

Thangaraj, that he has not received any amount as bribe to measure and demarcate the lands and that since he insisted P.W.2 to settle the commission amount to Thangaraj(D.W.1) he got angry with him and to wreck his vengeance he made a false complaint with the respondent police. He did not produce any document but examined D.Ws.1 and 2. After analysing the evidence on record, the learned Chief Judicial Magistrate, Thoothukudi, found the accused guilty and handed down the sentences as mentioned above.

4. Point for consideration:

The point for consideration in this appeal is, whether the prosecution has established the charges framed against the accused beyond all reasonable doubt?

Point:

5. The learned Senior Counsel Mr.V. Kathirvelu would contend that the evidence of the prosecution witnesses have not established demand on the part of the appellant and even if the tainted money is recovered from the possession of the accused, as per settled principles of law, he can not be found guilty and in this case, the tainted money was not seized from the possession of the accused, that the respondent police have not taken up the investigation in a lawful manner, that the Court below has failed to appreciate the defence version in a proper perspective and that the prosecution has miserably failed to prove the charges.

6. Contending contra, the learned Government Advocate (Criminal Side) Mr.P. Kandasamy would argue that the evidence of the witnesses are cogent and natural and there is no remarkable discrepancies available in their evidence, that the investigation proceeded in a right angle and that the charges have been proved beyond reasonable doubt.

7. Adverting to the allegation of demand, the evidence of P.W.6 plays a vital role. It is definite version of P.W.2 that on 01.10.2002 at about 12.30 p.m., in his office the appellant demanded illegal gratification of Rs.15,000/- from him and on his request it was settled at Rs.10,000/-. P.W.6 is the erstwhile V.A.O. of Aalampatty village who accompanied the appellant for measuring the landed properties alongwith

revenue records. He would say in his chief examination that at about 10.00 a.m., the accused measured the property as per the survey number and demarcated the boundaries. But in his cross examination, he has given evidence that on 1.10.2002 he went alongwith the accused at about 9.00 a.m. and they were performing the duties of measuring the properties from 9.00 a.m. to 1.00 p.m. and thereafter the accused came to his (P.W.6) office, took copies of 10(1) Adangal, A Register, Field Measurement Record and left his (P.W.6) office about 2.00 p.m. He was treated as hostile witness and cross examined by prosecution side. In his re-examination, he would clarify that normally the measuring procedure would take atleast 5 hours.

8. D.W.2 Village Assistant of Aalampatti also accompanied the accused and P.W.6 to the lands of P.W.2 for measurement. He says that at about 9.00 a.m., they reached the place and upto 1.30 p.m. they were measuring the properties which were about 12 acres of land, thereafter they came to the office of P.W.6 and the accused prepared the copies of the revenue records and left the office after 2.00 p.m. The above said evidence of P.W.6 and D.W.2 would indicate that there was no demand. P.W.6 is a creditable witness. He accompanied the appellant to measure the property. His evidence is natural and convincing though available in the cross examination by the defence side. There is no room to ignore or brush aside his oral evidence. His evidence is being strengthened by the oral account of D.W.2 who is still in service. No material is available to disbelieve their evidence. When their evidence are taken for consideration, the appellant was along with P.W.6 and D.W.2 in the lands of P.W.2 and engaged himself in the process of demarcating the boundaries from 9.00 a.m. to 1.00 p.m. and the version of P.W.2 that the appellant demanded bribe from him at 12.30 p.m. on 1.10.2002 is falsified. In this context, it has to be necessarily observed that there was no demand.

9. It is also argued by the learned Senior Counsel for the Appellant that P.W.3 being a party to the trap team, he could not be an independent witness and his evidence has not served any purpose as per the law, laid down by the Apex Court.

10. In support of his contention, he placed reliance upon the following judgments of this Court:

10.(a) In 2011 (3) MLJ(Crl.) 372 [A. Venkatachalam and Another v. State] it is observed that when tainted money is not seized from the prime accused, the burden is heavily upon the prosecution to prove that there was a demand by the accused and the same was tendered by the de-facto complainant and mere possession of tainted money is not enough to prove the guilt in the absence of proof of demand and acceptance of money as illegal gratification.

10.(b) The same principle has been reiterated in 2011 (3) MLJ(Crl.) 473 [State v. R.Duraisamy], so also in 2011 (2) MLJ(Crl.)459 [Rajendran v. State].

10.(c) In 2011 (3) MLJ(Crl.)481 [T.M.Shanmughavelu and Another v. State] this Court while re-stating the above said proposition, also observed that the witnesses who formed part of the raiding party were not independent, following a decision of the Honourable Supreme Court in Som Prakash v. State of State of Punjab in AIR 1992 SC 665. In the present case P.W.3 was trained by P.W.7 and he also formed part of the raiding party and it is to be observed that his evidence is not supportive to the oral testimony of P.W.2 in the matter of receiving bribe.

11. A defence has been taken by the appellant that P.W.2 is a real estate broker and D.W.1 Thangaraj is also a real estate broker and there were some transaction between them in which P.W.2 had to pay Rs.25,000/- to Thangaraj and the appellant had pressurized P.W.2 to settle the amount and on 3.10.2002 at about 6.45 p.m. while he was in the shop of P.W.5, P.W.2 came and paid Rs.10,000/- to him payable to Thangaraj and he received the same and gave it to Krishnaswamy(P.W.5) and asked him to handover to Thangaraj when he came to the shop.

12. P.W.16 Investigating Officer would state in his cross examination that while he got the case file from P.W.7, he (PW7) had not examined the accused and recorded his statement, that while he (PW16) proceeded the investigation, recorded statement of accused, he did not enclose the same along with the charge sheet while he filed the same before the Court and that it is not correct to state that he has suppressed the statement since it would be adverse to the prosecution case.

13. It is the bounden duty of the Trap Laying Officer to examine the accused immediately after the arrest at the place of trap and failure in following the rule would vitiate the procedures. P.W.7, the Trap Laying Officer did not examine the appellant after the arrest as to his explanation for the possession of money. The tainted money was not recovered from the possession of the appellant, but from P.W.5. In this context, it is advantageous to extract the provision available under Rule 47 of DVAC Manual which reads as follows: 47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded. [DVAC Circular Memo No.33979/VAC-4/76, dated 10th December, 1976]

The failure on the part of the Trap Laying Officer to record statement from the accused immediately after the arrest would vitiate the entire proceedings.

14. As regards the handing over of money by the appellant to P.W.5, it is logical to contemplate that since it was the money to be paid to Thangaraj, land broker, the appellant gave the same to P.W.5. Had the appellant received the money as bribe, he need not have handed over to P.W.5, but he would have retained the same with himself. The said Thangaraj was brought to box as D.W.1 who would depose that both himself and P.W.2 are real estate brokers and in the transaction between them he had to pay Rs.25,000/- to him, that he requested the accused to persuade P.W.2 to pay the amount at the earliest and the accused in his (D.W.1) presence

had told P.W.2 that he was (D.W.1) in dire need of money. This circumstance also has to be borne in mind.

15. It is the case of the prosecution that the left hand fingers of the appellant while dipped into the sodium carbonate solution, it did not turn to pink. But P.W.3 in his cross examination would state that while left hand fingers of the accused into the solution it turned pink.

16. In view of the above said observations, I am of the considered opinion that the charges against the appellant have not been established beyond reasonable doubt. The demand has been proved to be a farce. The statement of the accused was not recorded by Trap Laying Officer as per the procedure contained in DVAC Manual. The defence also sounds probable. Hence the judgment of conviction and sentence passed by the Court below has to be necessarily interfered with and the same is liable to be set aside and accordingly set aside. The Appeal deserves to be allowed. I answer this point as indicated above.

16. In fine, the Appeal is allowed acquitting the appellant from the charges framed against him. Fine amount, if any paid by the appellant shall be refunded to him. The disposal of the M.O.1 and 2 series, (cash of Rs.10,000/-) are directed to be refunded to P.W.2 after further appeal time. Other material objects shall be in accordance with the directions of the trial Court. Bail bond executed by the Appellant shall stand discharged.

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