Syed Saliha Vs. State

Syed Saliha Vs. State

SooperKanoon Citation : sooperkanoon.com/965152

Court : Chennai

Decided On : Apr-01-2013

Judge : T.Sudanthiram

Appellant : Syed Saliha

Respondent : State

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

01. 04.2013 CORAM: THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM Criminal Appeal No. 960 of 2004 Syed Saliha .. Appellant Versus The State rep. by The Inspector of Police Vigilance and Anti Corruption Dharmapuri .. Respondent Appeal filed under Section 374 of Cr.P.C. against the judgment dated 14.07.2004 passed in C.C. No. 1 of 1999 on the file of the learned Chief Judicial Magistrate not I, Krishnagiri (Special Charge). For Appellant : Mr. John Sathyan For Respondent : Mr. P. Govindarajan Additional Public Prosecutor JUDGMENT The appellant is the accused in C.C. No. 1 of 1999 on the file of the learned Chief Judicial Magistrate not I, Krishnagiri. He stood convicted for the offences punishable under Section 7 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act and sentenced to undergo three years rigorous imprisonment for each of the offence and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months, however, the sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant has filed the above criminal appeal.

2. The case of the prosecution is that in the appellant was working as Leading Fireman at Sipcot Fire Station, Hosur. PW2, Govindaraj was a resident of Berigai and he gave an application dated 18.09.1995 to the appellant/accused requesting to issue No Objection Certificate so as to enable him to open a fire cracker shop on the eve of Deepavali festival. At that time, the appellant/accused demanded a sum of R.1,100/- as illegal gratification for issuing such No Objection Certificate. Again, on 02.10.1995, when PW2 met the appellant/ accused, he reduced the demand of illegal gratification to Rs.750/- and on 09.10.1995, he further reduced the bribe amount to Rs.650/-. On 10.10.1995, PW2 went to the office of the Inspector of Police, Vigilance and Anti Corruption Department, Dharmapuri, the respondent herein and gave the complaint, Ex.P3 to PW10, Inspector of Police. On receipt of the complaint, Ex.P3, PW10 registered a case in Crime No. 3/AC/95 under Section 7 of the Prevention of Corruption Act. The copy of the first information report was marked as Ex.P15. Thereafter, PW10 arranged for a trap and directed PW2 to be present in the office of the Inspector of Police, Vigilance and Anti Corruption Unit, Krishnagiri the next day. In the meantime, PW10 arranged for mahazar witness. On 11.10.1995, PW2, the complainant, PW4 and PW5, who are mahazar witness, were present before PW10. PW10 got Rs.650/- from PW2 in the denomination of 6 hundred rupees notes and 1 fifty rupees note. PW10 explained to them about the sodium carbonate solution test and directed them to go to the office of the appellant/ accused. PW10 also handed over the currency notes to PW2. PW4 was directed to accompany PW2 and a recovery mahazar was prepared. PW10 also instructed PW2 to give the bribe amount to the appellant/accused only on demand and instructed to signal them by touching his beard once the bribe amount is received by the appellant/accused. Thereafter, PW10 along with his party went to the Fire Service Office and waited for the signal. At that time when PW2 and PW4 went to the office of the appellant/accused, where the appellant/accused was sitting. PW2 handed over the tainted currency notes. The accused also received the amount and kept it in his shirt packet. On receipt of the amount, the appellant/accused handed over the No Objection Certificate to PW2, which was marked as Ex.P5. According to PW4, the appellant/accused kept the money in his pant pocket. Thereafter, PW4 gave signal and PW10 along with his party rushed inside the office of the appellant/accused.

PW10 introduced himself to the appellant/accused and made ready two glasses of water mixed with sodium chloride and asked the appellant/accused to dip his hands. When the appellant/accused dipped his hands, the water turned into red. PW10 thereafter enquired the appellant/ accused and recovered the currency notes from his pant pocket. The numbers in the currency notes were found to be tallying with the numbers already noted by PW10. PW10 thereafter arrested the appellant/accused. PW11, Deputy Commissioner of Police took up the investigation and recorded the statement of witnesses. PW11 also obtained sanction from PW1, Divisional Fire Officer, Krishnagiri Division to prosecute the appellant/accused. On completion of investigation, PW11 laid the final report against the appellant/accused.

3. In order to prove the case against the appellant/accused, the prosecution examined Pws 1 to 12, marked Exs. P1 to P21 besides MOs 1 to 6. On behalf of the appellant/accused, neither any document was marked nor any witness examined. The appellant/accused was questioned under Section 313 of Cr.P.C. and he denied his complicity. The trial court, after analysing the evidence on record, convicted and sentenced the appellant/accused as stated above.

4. Mr. John Sathyan, learned counsel appearing for the appellant/ accused submits that PW2, the complainant, in his cross-examination has not stated anything about the demand of any bribe amount by the appellant/accused on the date of trap. PW3, Vasu is said to have accompanied PW2 on 10.10.1995 to the office of the appellant/accused. According to PW3, the bribe amount was demanded by two to three persons for issuing No Objection Certificate to PW2. Even PW4, Mahazar witness, who accompanied PW2 on the date of laying trip, did not say that the appellant/accused demanded bribe amount on the occurrence day. The prosecution has not established the most important ingredient of demanding bribe amount by the accused on the date of the occurrence. Further, the appellant/accused has not accepted the bribe amount said to have been paid by PW2. The evidence of PW2 and 4 are totally contrary to each other with regard to handing over the bribe amount. PW2 in his evidence has stated that the appellant/accused received the bribe amount and kept it in his shirt pocket, while PW4 stated that the appellant/accused received the amount and kept it in his pant

packet. According to the appellant/accused, the bribe amount was planted by PW2 underneath a newspaper which was kept on the table. The learned counsel for the appellant further submitted that Ex.P5, No Objection Report was made ready even on 22.09.1995 i.e., fifteen days prior to the occurrence and as such, there was no occasion for the appellant/accused to have demanded any bribe amount. According to the appellant/accused, PW2 has not met the appellant/accused at all prior to the incident.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that PW2 has specifically stated in his chief-examination that he met the accused on 02.10.1995 and 09.10.1995 and on both these days, the accused demanded bribe amount. On 11.10.1995, the appellant/accused accepted the bribe amount given by PW2 and kept it in his pant packet. When the appellant/accused dipped his hand in the sodium carbonate solution, it proved positive. The appellant/accused has not come forward with any explanation and therefore, the presumption under Section 20 of Prevention of Corruption Act is attracted.

6. This Court considered the submissions of both sides and perused the materials on record. PW2 applied for issuance of a No Objection Certificate to the appellant/accused on 18.09.1995. PW2 in his chief examination has stated that the accused demanded a sum of Rs.1,100/- as bribe amount from him for issuing such No Objection Certificate. Again, when PW2 met the appellant/accused, he reduced his demand to Rs.750/- and thereafter when he met the appellant/accused on 09.10.1995, the demand was further reduced to Rs.650/-. But in the cross-examination, PW2 has stated that the demand for payment of illegal gratification was first made by a fireman on 02.10.1995, the second such demand was made by a Writer in the Fire Station on 09.10.1995. PW2 has not specifically stated that on the date of trap namely 11.10.1995, the appellant/accused demanded any bribe amount and thereafter only he handed over the bribe amount, though it was specifically instructed by the Trap laying Officer to hand over the amount only on demand. PW4, who accompanied PW2 has not given any evidence to the effect that the appellant/accused demanded the bribe amount and thereafter only PW2 handed over the amount to the

appellant/accused. The prosecution has not established by way of any substantive evidence that the appellant/accused has demanded bribe amount.

7. According to the evidence of PW2, on the date of trap, the appellant/accused received the bribe amount given by him and kept it in his shirt pocket. But according to PW4, the amount received by the appellant/accused was kept by him in his pant pocket. It is also seen that only the pant was subjected to phenolphthalein test and not the shirt. It is not established whether the bribe amount was received by the appellant/accused and kept in his pant or shirt pocket. On the other hand, the appellant/accused totally denied having received any amount. According to the appellant/accused, the amount was planted underneath a newspaper kept on the table. A doubt arises with regard to handing over the bribe amount and the manner of recovery. At the time of recovery of the bribe amount, PW6, Thiyagarajan, Fireman was on duty and present at the scene of occurrence. PW6 was not called to stand as a witness to give evidence about the recovery and his signature has not been obtained in the recovery mahazar. This aspect also raises serious doubt with regard to the case projected by the prosecution.

8. The Honourable Supreme Court has observed in the decision reported in Suraj Mai vs. State (Delhi Admn.,) AIR 197.SC 140.has held as follows:- ".....Mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe." 9. The prosecution having failed to establish the ingredients that the appellant/accused demanded the bribe amount, this Court is unable to accept the theory of recovery of the tainted currency from the appellant/accused especially when the evidence let in on behalf of the prosecution is surrounded by doubts.

10. In view of the above, this criminal appeal is allowed and the conviction and sentence imposed on the accused on 14.07.2004 in C.C. No. 1 of 1999 on the file

of the learned Chief Judicial Magistrate not I, Krishnagiri (Special Charge) are set aside. rsh To 1. The Chief Judicial Magistrate not I Krishnagiri 2. The Public Prosecutor High Court Madra

10.