

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on: 12.06.2023

Pronounced on: 05.07.2023

Coram:**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**Crl.A.No.803 of 2015Jayaram,
S/o.Venkatasamy.

... Accused/Appellant

/versus/State Rep. by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Special Cell, Salem.
Cr.No.13/AC/2005/DP of V & AC,
Dharmapuri,
Krishnagiri District.

... Complainant/Respondent.

Prayer : Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., against the judgment and conviction passed by the Learned Chief Judicial Magistrate, Krishnagiri, dated 27.11.2013 in Special C.C.No.01/2007 for the offence under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The appellant is convicted and sentenced to undergo R.I. for 6 months and to pay a fine of Rs.1000/- in default S.I. for one months for an offence under section 7 of Prevention of Corruption Act, 1988 and undergo R.I. for 1 year and to pay a fine of Rs.2000/- in default S.I. for six months for an offence under section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988. The substantive sentences imposed on the appellant are ordered to run concurrently.



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For Appellant : Mr.R.John Sathyan, Senior Counsel,
for Mr.T.Panchatcharam.

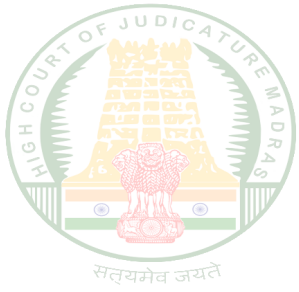
For Respondent : Mr.S.Udaya Kumar,
Government Advocate (CrI.Side).

J U D G M E N T

The appellant Mr.Jayaram, a public servant, as Village Administrative Officer, Kamandoddi Village, Hosur Taluk, Krishnagiri District found guilty of demand and acceptance of Rs.1500/- as illegal gratification from one Annamalai for recommending patta transfer and survey his land and building.

2. The trial Court *vide* its judgment dated 27.11.2015 in Spl.C.C.No.01 of 2007 convicted and sentenced the accused to undergo 6 months R.I and to pay fine of Rs.1,000/- in default one month S.I for the offence under Section 7 of Prevention of Corruption Act, 1988 and to undergo one year R.I and pay fine of Rs.2,000/- in default 6 months S.I for the offence under Section 13(2) r/w 13(1)(d) of P.C Act. The substantive sentences for both offences were ordered to run concurrently.

3. The case of the prosecution:-



Tr.R.Annamalai S/o.Ramasamy of Kamanthotti Village purchased

land and building in S.F.No.223/1A2A of Kamanthotti Village under two sale deeds. For transfer of patta and sub-division, he made an application to the Revenue Divisional Office, Hosur. His application through the Tahsildar Hosur, for remarks and report was forwarded to the accused/appellant, who was then the VAO. The accused called Tr.R.Annamalai and directed him to remit prescribed fees at Sub-Treasury, Hosur. Annamalai remitted Rs.80/- on 22.04.2005 at Sub-Treasury and thereafter, gave a letter on 25.05.2005 to Tahsildar to act on his request for patta transfer. 15 days thereafter, when Annamalai met the accused to enquire about his application, the accused demanded Rs.1500/- as bribe. Again after 15 days, Tr.R.Annamalai met the accused, at that time the accused reiterated his demand. On 05.10.2005 evening, when Annamalai met the accused, he assured to process his application, if he brings Rs.1500/- on the next day. Tr.R.Annamalai was not interested to give bribe. Hence, on 06.10.2005 reported to the Inspector of Police, Vigilance & Anti-Corruption, Krishnagiri. His statement was recorded and on the strength of his statement, F.I.R was registered in Crime No.13/AC/2005 under Section 7 of P.C Act, 1988 on 06.10.2005 at 06.45 hours. Subsequent to the registration of the complaint, Investigating Officer made



arrangement to trap the accused. He sought the assistance of Murugan, Assistant

working in Office of Divisional Engineer, State Highways, Krishnagiri and A.K.Raja, Junior Drafting Officer, TWAD Board, Krishnagiri. In their presence, the significance of phenolphthalein test was demonstrated. The bribe money was smeared with phenolphthalein and entrusted to the complainant with an instruction that, he should take the money and give it to the accused, if he demands. The entrustment mahazar was prepared at the office of V&AC between 10.30 a.m to 11.30 a.m. Thereafter, the trap team proceeded to the VAO Office at Kamanthotti Village.

4. The complainant/Tr.R.Annamalai and shadow witness Murugan entered the Office of the accused at 12.45 hours. The accused, on seeing Tr.R.Annamalai, asked others waiting near his table to go out and when he was alone enquired whether the complainant has brought the money he demanded. When the complainant took out the money, the accused received it and kept it under the file lying on his table. Then, told the complainant that, he will complete the work at the earliest.

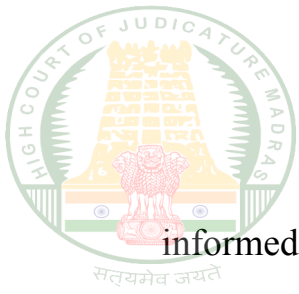
5. Thereafter, the complainant and shadow witness came out, gave the



pre-arranged signal to the trap team. On receiving the signal, Inspector of Police,

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V&AC, along with the team members entered the accused room and got themselves introduced. The accused got perplexed. He was pacified by the Inspector of Police. Two tumblers of sodium carbonate solution was prepared and accused was asked to dip his left and right hand fingers separately in each of the tumbler. On such dipping, the colour of the solution turned light red. The right and left hand wash were collected in two bottles marked as M.O.4 and M.O.5 and labelled. Then, the Inspector of Police enquired the accused whether he has received any money from Tr.R.Annamalai. Initially, the accused denied the receipt of money thereafter, admitted that, he has received the money and took out the currency which was kept under the file. The Inspector of Police asked one of the team member to verify the numbers found in the three Rs.500/- notes bearing Nos.5CA503341, 8DC280031 and 1HP510237, recovered from the table with the numbers recorded in the entrustment mahazar. They found tallied with the numbers found in the entrustment mahazar prepared at V&AC office on that day earlier at 10.30 a.m. On the search of the shirt pocket of the accused, Rs.140/- was found and same was returned to the accused. When the Inspector of Police asked for the file related to the application given by Tr.R.Annamalai, the accused



informed that, the file is not with him and it never came to his notice. On enquiry

found that, the application is in the Taluk Office, Hosur at Survey section.

6. The Inspector of Police, being satisfied that, Rs.1500/- recovered from the accused is the bribe money demanded and obtained by the accused as an illegal gratification, arrested the accused and proceeded further with the investigation. The hand wash solution collected were sent to chemical analysis. The chemical analysis report disclosed presence of phenolphthalein-sodium carbonate. After obtaining sanction to prosecute, final report laid before the Special Court, V&AC at Krishnagiri, charges under Sections 7 and 13(2) r/w 13(1)(d) of P.C Act against the accused was tried.

7. To prove the charges, the prosecution examined 13 witnesses (P.W.1 to P.W.13) and marked 37 exhibits (Ex.P.1 to Ex.P.37) and 5 material objects (M.O.1 to M.O.5).

8. The Sanctioning Authority was examined as P.W.1. The sanction



to prosecute marked as Ex.P.1. The defacto complainant Tr.R.Annamalai was

examined as P.W.2. The documents relating to his application were marked through him. The shadow witness Thiru.Murugan was examined as P.W.3. He had spoken about his presence at Vigilance Office, to assist the trap and accompany P.W.2 Tr.R.Annamalai to VAO office. P.W.4 Francis is the vendor of the land. P.W.5 Lingammal, is the purchaser of the land from Francis. While P.W.4 had said that, when he sold the property, there was no patta for the land. P.W.5 Lingammal also admits that, she did not receive patta from her vendor Francis. She did not take any steps to get patta in her name for her 2 cents of land. P.W.6 Panneerselvam, the Tahsildar, Hosur at relevant point of time. He had spoken about the fact that, the accused reported to him that the land for which Tr.R.Annamalai seek patta transfer does not have any patta and therefore, his application must be rejected.

9. P.W.7 Krishnan, Inspector, Survey Department had deposed about his dealing with the file connected with the application given by Tr.R.Annamalai. He had deposed that, since the vendor of Tr.R.Annamalai have no patta, transfer of patta cannot be issued in favour of Tr.R.Annamalai. However, on seeing the



report of the accused, he felt that if there is no record in respect of the land to

show it is Patta land, atleast for 2 cents of land, Annamalai must have been given a joint patta.

10. P.W.8 M.G.Ramalingam, who succeeded the accused had deposed that, the land in S.F.No.223/1A2A to an extent of 871.25 sq.ft belongs to Lingammal and in the same S.F.No.223/1A2A, 1112 sq.ft purchased by the complainant. If the land belongs to two persons and one of them apply for patta, issuance of separate patta is not possible, but joint patta must have been given to the applicant who have title over it. P.W.9 Munusamy, Sub-Registrar, Shoolagiri had spoken about the title documents of land in S.No.223/1A2A to an extent of 871.25sq.ft purchased by Tr.R.Annamalai from Lingammal and sale deed of Francis and his wife Tmt.Rose Mari in respect of 1112 sq.ft of land in the same survey number.

11. P.W.10 Visalatchi, is the Scientific Officer attached to Tamil Nadu State Forensic Department who had spoken about her report on the sample sent for analysis and her report indicates that, solution contains phenolphthalein



and sodium carbonate.

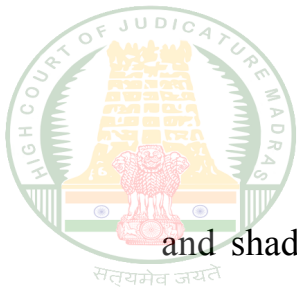
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12. P.W.11 Thiru.Baskar is the Inspector of Police who registered the complaint and proceeded with the trap. P.W.12 Thiru.Santhalingam, Retired Court staff. He had deposed about forwarding the hand wash solutions to the laboratory for chemical analysis. P.W.13 Thiru.Somasundaram, who succeeding P.W.11 Thiru.Baskar as Inspector of Police, V&AC, Krishnagiri, had deposed about completion of investigation and filing of final report.

13. The trial Court, on appreciating the oral and documentary evidence had concluded that the accused is guilty of the charges.

14. Being aggrieved by the order of the trial Court, the present Criminal Appeal is filed.

15. The Learned Senior Counsel appearing for the appellant submitted that the case of the prosecution is highly unbelievable. The contradictions in the evidence of the defacto complainant P.W.2 Tr.R.Annamalai



and shadow witness P.W.3 Murugan regarding the recovery of money from the

WEB COPY accused is sufficient to hold that the prosecution has not proved the case beyond doubt.

16. According to the Leaned Counsel for the appellant, the case of the defacto complainant P.W.2 as found in his complaint is that, he purchased the land in the year 2002 and 2005 and gave a request for issuance of patta and survey the land in the RDO camp. Thereafter, after 6 months, he was called by the accused through a menial and informed that the file is with him, to process the file, he has to pay Rs.80/- fees in the Treasury. Accordingly, he paid Rs.80/- on 22.04.2005. When he met the accused again, the accused demanded Rs.1500/- for identifying the land and to measure the land through menials. Again after 15 days, he met the accused, then again, the accused reiterated the demand. Thereafter, on 05.10.2005 evening, when he met the accused, he again demanded Rs.1500/- and said that, if he brings the money, he will process his file. Since he was not interested to pay the bribe money, he has given the complaint.

17. The vendors and Sub-Registrar had deposed that, the land in



S.F.No.223/1A2A consists of two parts, 871.25sq.ft was first purchased by the

complainant from P.W.5 Lingammal in the month of July-2002 and second part of 1112 sq.ft purchased by him during the month of January-2005. He claims that, six months prior to the complaint, he gave a representation to Tahsildar when Revenue Divisional Officer conducted mass contact camp. The accused called him through menial and informed that the file has come to him and directed to pay Rs.80/- as fees in the Sub-Treasury.

18. From the prosecution evidence, it is clear that the vendor of the defacto complainant Lingammal as well as Francis had no patta for the land. The defacto complainant has purchased the land which is not assigned with any patta. Therefore, when his application was forwarded to the accused, same was rightly returned. This has been spoken by the prosecution witnesses P.W.6 Panneerselvam, the Deputy Tahsildar and also by Krishnan (P.W.7). The Trap Laying Officer P.W.11 Baskar admits that, the file connected to the application of the defacto complainant was not with the accused on the day of trap and it was collected from the Taluk Office subsequently. When there is no file pending with the accused and the request of the complainant already been rejected, the motive



of the complainant to fix the accused could be easily seen.

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19. Neither the Trap Laying Officer nor the trial Court had considered the fact that, it is a motivated complaint, to fix the accused, the defacto complainant has kept the money under the file and made the Trap Laying Officer to hold the accused by hands and asked the accused to take the money under the file and thereafter, the hands were tested with sodium carbonate solution.

20. The Learned Senior Counsel appearing for the appellant reading the portion of the shadow witness P.W.3 who had deposed that, the accused was asked to take the money first and thereafter, phenolphthalein test was conducted submit the benefit of doubt should be extended to the accused in the absence of proof of fundamental fact that the accused demanded bribe from the defacto complainant as a reward or motive.

21. The Learned Senior Counsel appearing for the appellant also submitted that the evidence as well as the exhibits relied by the prosecution clearly shows that, the defacto complainant is not entitled for patta and his request for



patta already been considered by the accused and declined. The time gap from the

date of complaint and trap shows that, to settle score with the accused, the defacto complainant has made use of the Vigilance Department to falsely trap.

22. Apart from the above submission, the Learned Senior Counsel appearing for appellant submitted that the application for transfer of patta is marked as Ex.P.4 dated 25.05.2005. The accused has rejected his request on 08.08.2005. The complaint alleging that the accused demanded Rs.1500/- on 05.10.2005 is unbelievable since at that point of time, the request of the complainant was already been rejected and the file was not with the accused. The complaint given on the next day between 6.45 hours and 7.15 hours been registered at 8.45 hours.

23. P.W.11 Baskar had deposed that, he registered the F.I.R at 6.45 to 7.15 a.m and forwarded it to Chief Judicial Magistrate, Dhamapurai immediately and same been received by the Chief Judicial Magistrate. In the cross examination, P.W.11 admitted that, he is not aware that, the request of the defacto complainant for transfer of patta was rejected on 08.08.2005. This indicates that, the Trap



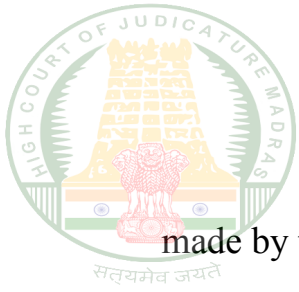
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Laying Officer has not conducted any preliminary enquiry before registering the

WEB COPY complaint. He has not ascertained that there are two criminal cases against the defacto complainant and therefore, the accused refused to give conduct certificate for the complainant.

24. Per contra, the Learned Government Advocate (Crl.Side) for the respondent submitted that the prosecution has proved beyond doubt that the tainted money of Rs.1500/- was received by the accused and kept under the file lying on the table and same was recovered by the Trap Laying Officer. Through P.W.2 and P.W.3, the demand of bribe money and receipt of the same been proved. Handling of the tainted money by the accused is established through chemical analysis report Ex.P.26.

25. The case of the prosecution that, the defacto complainant gave a request for patta *vide* application Ex.P.4 accompanied with the chellan Ex.P.3 is an admitted fact. The rejection of the application alleged to have been done by the accused on 08.08.2005 is not a ground to disbelieve the case of the prosecution since the Tahsildar and succeeding VAO had deposed that the request for patta



made by the defacto complainant cannot be rejected when he hold a valid title over the property and the title deeds marked and the vendors examined to show that the defacto complainant has valid title to get patta.

26. Though P.W.3 Murugan had contradicted the evidence of P.W.2 and P.W.11 regarding the recovery of money. The change in sequence will not materially affect the case of the prosecution since prosecution has proved the demand and acceptance through ocular evidence.

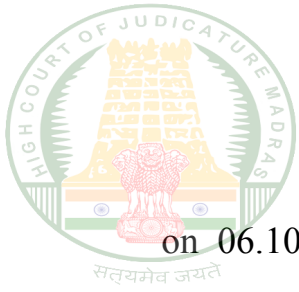
27. Heard the Learned Senior Counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

28. According to P.W.2 Tr.R.Annamalai, the accused was repeatedly demanding bribe and last demand was on 05.10.2005. After complaint, during the trap proceedings on 06.10.2005, when he went to the office of the accused, they were few more persons in the office, the accused asked others to go out and received the money from him. P.W.3 Murugan is the shadow witness who was sent by P.W.11 (Trap Laying Officer) to oversee the transaction. He also



corroborates the evidence of P.W.2 to this extent. According to these two witnesses (P.W.2 and P.W.3), the accused received the money and kept it under the file which was on the table. Thereafter, it is stated by P.W.2 that, the accused promised P.W.2, he will take care of his application and process it. Contrarily the documentary evidence indicates that, the accused had rejected the request of the complainant for grant of patta and the file was not with him. Therefore, the alleged demand on 05.10.2005 is unbelievable since on that day, the accused had no control over the file or on decision since he has already rejected it and returned it to Taluk Office. Unless and until, his Superior Officer ask him to reconsider his decision and send back the file, he cannot give a different opinion.

29. In this contest, the hastiness of the Trap Laying Office registering the complaint and proceeding with the trap also to be taken note of. The complaint was registered soon after receiving it and the trap proceedings started immediately. Whether before registering the complaint, the Trap Laying Officer had made any preliminary enquiry about the credential of the complainant as well as the accused is not brought forth. P.W.3, the shadow witness Mr.Murugan is an Assistant in the Highways Department. He has deposed that, at about 10.00 a.m



on 06.10.2005, his Superior Officer Thiru.Veerapan requested him to meet the

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Inspector, V&AC, Krishnagiri, at his office to assist the trap. Accordingly, he went to the Office of V&AC and met P.W.11 Thiru.Baskar at 10.25 a.m. He was introduced to the defacto complainant and other shadow witness and in his presence, entrustment mahazar was prepared. The mahazar was prepared between 10.30 a.m to 11.30 a.m by the Trap Laying Officer and he has affixed his signature. In the cross examination, he admits that, the defacto complainant did not inform him that, his application for transfer of patta was rejected on 08.08.2005. The Trap Laying Officer has deposed that, for getting the assistance of P.W.3 Murugan, he made a written request to Ex.Engineer, Highways Department to spare an Officer to assist the Trap. There is no such letter marked, to prove that, P.W.3 was present in the Vigilance Office on the written request by the Trap Laying Officer. To believe that, he was present at the time of trap and had seen the accused demanding bribe and receipt of bribe money, no evidence except the oral evidence of the Trap Laying Officer P.W.11.

30. The contradiction with P.W.2 Tr.R.Annamalai regarding recovery



of tainted money creates doubt about the case of the prosecution which gets

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enhanced by the fact that the accused had already rejected the application of the

defacto complainant two months earlier and the file was not with him for any

consideration. Also the accused has probablised his defence of fixing him in this

case by suggesting that the defacto complainant had ill-motive against him for not

giving conduct certificate and also rejecting his application for grant of patta.

When the prosecution evidence lack proof beyond doubt and suffers material

contradiction, the conviction on presumption has to be set aside.

31. In the light of the doubtful nature of the prosecution case, the conviction and sentence passed by the Chief Judicial Magistrate, Krishnagiri in Special C.C.No.01 of 2007 is hereby set aside. Accordingly, ***the Criminal Appeal is Allowed.*** Fine amount paid if any by the accused, shall be refunded to him.

Bail bond if any executed by the appellant shall stand cancelled.

05.07.2023

Index :Yes.

Neutral Citation :Yes/No.

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1. The Chief Judicial Magistrate, Krishnagiri,
2. The Deputy Superintendent of Police, Vigilance and Anti Corruption,
Special Cell, Salem, Dharmapuri, Krishnagiri District.
3. The Public Prosecutor, High Court, Madras.



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VERDICTUM.IN



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Dr.G.JAYACHANDRAN,J.
bsm

Delivery judgment made in
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