

(2015) 03 MAD CK 0192
In the Madras High Court
Case No : Criminal Appeal No. 212 of 2008

P.V. Sarguru

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 313(1)(b)
Prevention of Corruption Act, 1988 — Section 11, 13, 13(1)(d), 13(2), 20

Citation : (2015) 03 MAD CK 0192

Hon'ble Judges : R. Mala, J.

Bench : Single Bench

Advocate : S. Ashok Kumar, Senior Counsel for R. Karthikeyan, for the Appellant; V. Arul, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—This Criminal Appeal arises out of the judgment of conviction and sentence dated 20.02.2008 made in C.C. No. 7 of 2001 on the file of the learned Additional District and Sessions Judge/Special Judge, City Civil Court, Chennai whereby the appellant/accused is convicted and sentenced as follows:

2. The case of the prosecution based on the prosecution witnesses is as follows:

(a) P.W. 2/Shanmugaraj is running a STD, Xerox, Fax, Digital Colour Lab and Internet business in the name and style of "Lalitha Telecom Centre" at Door No. 11/2, Hotel Imphala Shopping Complex, Gandhi Irwin Road, Egmore, Chennai with ten computers and air-conditioned facilities. On 12.08.2000, at around 1.30 P.M., there was a fire in the electric meter box pertaining to the shop run by P.W. 2/Shanmugaraj. Immediately, he complained about the same to the Tamil Nadu Electricity Board.

(b) Thereafter, one Abdul Razack who was working as foreman in the Electricity Board visited the premises and informed P.W. 2 that the meter has to be changed and it would cost Rs. 830/- and that it would take 4 or 5 days to fix the new

meter. When P.W. 2 requested Abdul Razack to give direct connection, he obtained the permission of the appellant/accused over phone and gave direct connected. He also told P.W. 2 that if direct line is given then he need to pay the electricity charges based on the previous month bill, viz., bill pertaining to the month of May.

(c) Then on 14.08.2000, at 3.30 P.M., P.W. 2/Shanmugaraj along with Abdul Razack went to the office of the appellant/accused and met him. The appellant informed P.W. 2, since the load was very heavy, the capacity of the meter has to be increased from 10 amps to 40 amps and he also demanded Rs. 5,000/- as bribe for replacing new meter on 21.08.2000 at 2.30 P.M. Thereafter, on 26.08.2000 at 6.30 P.M., the appellant/accused visited the shop of P.W. 2/Shanmugaraj and demanded money. Again on 04.09.2000, P.W. 2/Shanmugaraj visited the office of the appellant and insisted him to install new meter at the earliest stating that the direct connection given to his shop would cost him more, for which the appellant/accused replied that the new meter would be fixed the very next day once he gave the bribe as was demanded by him. Against the said demand made by the appellant/accused, the complainant preferred a complaint/ Ex. P. 2 with the respondent police.

(d) On 05.09.2000, after making necessary arrangements, the trap party went to the office of the appellant/accused along with the witnesses at 3.15. P.M. However, when the trap party reached the office, the appellant was not present in the office. So, P.W. 2 informed his name to one Premkumar who was present in that office. The said Premkumar contacted the appellant/accused over phone and informed P.W. 2. to meet the appellant in the office at Spurtank Road, Chetpet. Thereafter, the trap party headed by P.W. 7/Vijayakumar went to the said office and conducted the trap proceedings.

(e) After the acceptance of the bribe amount, P.W. 2/Shanmugaraj made a signal to the trap party and they came into the scene of occurrence and seized the tainted money in the presence of the official witnesses. Immediately, the appellant/accused was arrested and phenolphthalein test was conducted. P.W. 7/Vijayakumar also recorded the statements of P.W. 2/Shanmugaraj and P.W. 3/ Abdul Kaleem. Then, P.W. 7/Vijayakumar after sending Ex. P. 14/advance intimation to the Court, went to the house of the accused and prepared a rough sketch/Ex. P. 15 and Ex. P. 7/Observation Mahazar. Thereafter, as per the direction of the Superior Officer, P.W. 7/Vijayakumar handed over the investigation to P.W. 8/Purushothaman. P.W. 8/Purushothaman also examined the witnesses and recorded their statements. Since he was transferred, he handed over the investigation to P.W. 9/John Rose.

(f) After obtaining Ex. P. 1/Sanction Order from P.W. 1/Gopalsamy, Chief Engineer and after completing the investigation, P.W. 9/John Rose filed the charge sheet under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act.

3. The learned Trial Judge placed incriminating evidence against the accused under Section 313(1)(b) Cr.P.C. The accused denied the same in toto. After considering the oral and documentary evidence, the learned Trial Judge has convicted the appellant/accused as stated above.

4. Challenging the conviction and sentence passed against this appellant, the learned counsel for the appellant would raise the following points:

(i) While according sanction, P.W. 1/Gopalsamy, the Chief Engineer has not applied his mind.

(ii) The first demand has not been proved. The first demand was alleged to be taken place on 21.08.2000 at 2.30 P.M. However, it was falsified by the evidence of D.W. 1/Parthasarathy who has deposed that on 21.08.2000, he held discussion with all the Executive Engineers and Assistant Executive Engineers in respect of a function to be convened on 25.08.2000 in which the Ministers were to participate.

(iii) The trap has not been proved. At the time of the alleged trap proceedings, this appellant was alleged to be present in the Egmore Police Station in order to prefer a complaint in respect of energy theft.

(iv) P.W. 2/Shanmugaraj, the complainant, is running a STD, Xerox, Fax, Digital Colour Lab and Internet business in the name and style of "Lalitha Telecom Centre". On 12.08.2000, at around 1.30 P.M., there was a fire in the electric meter box pertaining to the shop run by P.W. 2/Shanmugaraj. Immediately, he preferred a complaint with the Tamil Nadu Electricity Board and one Abdul Razack, foreman in the Electricity Board visited the premises and informed P.W. 2 that the meter has to be changed and it would cost Rs. 830/-. It is alleged that for installing the new meter, the appellant herein demanded a sum of Rs. 5,000/- on 21.08.2000 at 2.30 P.M. Further, on 05.09.2000 the appellant made the second demand and received the amount. But the trap itself was not proved because the appellant himself had issued an order on 17.08.2000 for installing the new electric meter and P.W. 5/Balasundaram alone is the competent person to install the same. So, the appellant has got nothing to do with the installation.

(v) Due to previous enmity, the false complaint has been preferred. To prove the same Ex. D2 has been filed. The de facto complainant, P.W. 2/Shanmugaraj has applied for new service connection. However, he has made the application without obtaining consent from the landlord and so, the application made by him was rejected. Hence, P.W. 2/Shanmugaraj has preferred the false complaint against this appellant.

(vi) The explanation given by the appellant at the time of questioning under Section 313 Cr.P.C. has not been considered by the Trial Court.

Thus, the Trial Court without considering all the above factum has convicted and sentenced the accused. Hence, the learned counsel for the appellant prayed for setting aside the conviction and sentence. To substantiate his argument, the learned counsel for the appellant relied upon the following decisions:

1. T. Subramanian Vs. State of Tamil Nadu, .
2. Vedagiri Vs. State, .
3. State of Kerala and Another Vs. C.P. Rao, .
4. V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., .
5. Subash Parbat Sonvane Vs. State of Gujarat, .
6. Union of India (UOI) thr. Inspector, CBI Vs. Purnandu Biswas, .

5. Resisting the same, the learned Government Advocate (Criminal Side) would submit that the first demand has been proved by way of examining P.W. 2/ Shanmugaraj and other witnesses. The second demand has been proved by way of examining P.W. 2/Shanmugaraj and P.W. 3/Abdul Kalim. The trap proceedings had been proved by way of examining P.W. 4/Sivaraman, the attester of recovery mahazar, P.W. 8/Purushothaman and P.W. 9/John Rose, trap laying officer. Thus, the learned Government Advocate would submit that the Trial Court has considered all the aspects in proper perspective and came to a correct conclusion. Hence, he prayed for dismissal of the appeal.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. Now this Court has to decide whether the sanction accorded by P.W. 1/ Gopalsamy is valid?

It is the case of the prosecution that P.W. 2/Shanmugaraj is running a STD, Xerox, Fax, Digital Colour Lab and Internet business in the name and style of "Lalitha Telecom Centre" at Door No. 11/2, Hotel Imphala Shopping Complex, Gandhi Irwin Road, Egmore, Chennai with ten computers and air-conditioned facilities. On 12.08.2000, at around 1.30 P.M., there was a fire in the electric meter box pertaining to the shop run by P.W. 2/Shanmugaraj. Immediately, he complained about the same to the Tamil Nadu Electricity Board. Thereafter, one Abdul Razack who was working as foreman in the Electricity Board visited the premises and informed P.W. 2 that the meter has to be changed and it would cost Rs. 830/- and that it would take 4 or 5 days to fix the new meter. When P.W. 2 requested Abdul Razack to give direct connection, he told P.W. 2 that if direct line is given then he need to pay the electricity charges based on the previous month bill, viz., bill pertaining to the month of May. Thereafter, he obtained permission and got through connection. Then on 14.08.2000, at 3.30 P.M., P.W. 2/ Shanmugaraj along with Abdul Razack went to the office of the Electricity Board and met the appellant. The appellant informed P.W. 2, since the load was very heavy, the capacity of the meter has to be increased from 10 amps to 40 amps and he also demanded Rs. 5,000/- as bribe for replacing new meter on 21.08.2000 at 2.30 P.M. Thereafter, on 26.08.2000 at 6.30 P.M., the appellant/ accused visited the shop of P.W. 2/Shanmugaraj and demanded money. Again on 04.09.2000, P.W. 2/Shanmugaraj visited the office of the appellant and insisted

him to install new meter at the earliest stating that the direct connection given to his shop would cost him more, for which the appellant/accused replied that the new meter would be fixed the very next day once he gave the bribe as was demanded by him. Against the said demand made by the appellant/accused, the complainant preferred a complaint. So, it is the case of the prosecution that for installing new electric meter in the premises of P.W. 2/Shanmugaraj, the appellant/accused demanded a bribe of Rs. 5,000/-.

8. Considering the evidence of P.W. 1/Gopalsamy, Chief Engineer (Distribution) who is the sanctioning authority as per Section 92 of TNEB Service Regulations, now it has to be decided whether he has applied his mind before according sanction. On perusal of the chief examination of P.W. 1/Gopalsamy, he has deposed that he has considered the entire papers and came to the conclusion to accord sanction. In such circumstances, I am of the view that the argument advanced by the learned counsel for the appellant that P.W. 1/Gopalsamy has not applied his mind while according sanction does not merit acceptance. So, Ex. P. 1/ Sanction Order is valid.

9. Whether the first demand has been proved ?

The learned counsel appearing for the appellant would submit that the de facto complainant has stated that the appellant herein has made the first demand on 21.08.2000 at 2.30 P.M., but the same was falsified by the evidence of D.W. 1/ Parthasarathy. To support his case, the appellant herein has examined D.W. 1/ Parthasarathy, Additional Chief Engineer and marked Ex. D. 1 to Ex. D. 5 to prove that the complaint against the appellant was preferred only due to previous enmity. The de facto complainant, P.W. 2/Shanmugaraj had applied for a new service connection with the appellant's office. However, as he had not obtained the consent of his landlord and the landlord raised his objection, his application for providing new service connection was rejected and provoked by the same, P.W. 2/Shanmugaraj had preferred the complaint against the appellant.

10. Now, this Court has to consider whether the evidence of P.W. 2/Shanmugaraj is reliable?

It is pertinent to note that on appreciation of evidence, witnesses can be broadly categorized into three categories viz., unreliable, partly reliable and wholly reliable. In the case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary.

11. D.W. 1/Parthasarathy in his evidence has clearly stated that for a function to be organised on 25.08.2000 in which 110 KW substation was to be inaugurated at Nandanam, he had convened a meeting of all the Executive Engineers and Assistant Executive Engineers working under him on 21.08.2000 till 3.00 P.M. After the meeting, he allocated them with work in respect of the said function and he left the place at 3.30 P.M. The log book was marked as Ex. D. 5. Further when a suggestion was posed to him that in order to save the appellant, he is

giving false evidence, he denied the same. So, there is a clear evidence to show that on 21.08.2000 at 2.30 P.M., when the appellant is alleged to have made the first demand, the appellant was not present in his office. So, the evidence of P.W. 2/Shanmugaraj is not trustworthy but it is motivated. Hence, it is unreliable.

12. P.W. 5/Balasundaram in his evidence has stated that the appellant has issued the order for installing the new meter on 17.08.2000 itself. However, he had further stated that on oral instruction of the accused/appellant only, he has not prepared the requisition for obtaining new meter from the store. In such circumstances, I am of the view that the above evidence of P.W. 5/Balasundaram is not reliable because it is his duty to prepare the requisition on the basis of the order passed by the appellant/accused on 17.08.2000. As he has failed in his duty, he would be subjected to disciplinary proceedings and so, P.W. 5/Balasundaram in order to save his skin has given such evidence. Furthermore, for discarding the evidence of P.W. 5, it is pertinent to note that on 05.09.2000, when P.W. 5 went to the Egmore Police Station to prefer a complaint against the energy theft, it was stated that the appellant must come in person to prefer the complaint and at that time, P.W. 5 called the office to inform the same to the appellant. However, in his evidence, P.W. 5 has stated that he did not know who answered him when he made a call to the appellant's office from the Egmore Police Station. Hence, I am of the view that the evidence of P.W. 5 is not trustworthy. So, the first demand has not been proved by the prosecution beyond all reasonable doubt, as it has been proved by the evidence of D.W. 1 and Ex. D. 3 and Ex. D. 5 that the appellant was at Nandanam on 21.08.2000 till 3.30 P.M. to attend the meeting convened by D.W. 1/Parthasarathy, Additional Chief Engineer. So, I am of the view that the first demand has not been proved by the prosecution beyond all reasonable doubt.

13. Now this Court has to decide whether the trap has been proved by the prosecution?

According to P.W. 2/Shanmugaraj, after entrustment, he along with the trap party went to the office of the appellant at E.V.K. Sampath Salai and found that the appellant/accused was not present in the office. So, P.W. 2 informed his name to one Premkumar who was present in that office. The said Premkumar contacted the appellant/accused over phone and informed P.W. 2. to meet the appellant in the office at Spurtank Road, Chetpet. Thereafter, the trap party went to the said office and conducted the trap proceedings. Ex. P. 4 is the Trap proceeding.

14. At this juncture, it is appropriate to consider the explanation given by the appellant/accused wherein he has stated that on the specific date, he was at the Egmore Police Station to prefer a complaint about the energy theft. A complaint has been registered in Crime No. 855 of 2000 and the FIR is marked as Ex. D. 4. The occurrence is said to have taken place at 2.00 P.M., but the complaint has been preferred only at 17.30 hours. So, the appellant/accused was at the Egmore Police Station at the time of the alleged occurrence and he is not at the

place of the trap proceeding. In such circumstances, the second demand/ acceptance is also not proved by the prosecution.

15. As already stated, the evidence of P.W. 5/Balasundaram is not reliable. To prove that Ex. D. 4/FIR has been registered in the absence of the appellant/ accused as was claimed by P.W. 5, the prosecution has not examined the police officer who registered the case. In such circumstances, as per the record viz., Ex. D. 4/FIR, the appellant herein has appeared before the Egmore Police Station and preferred a complaint at 17.30 hours. Hence, I am of the view that the trap has not been proved by the prosecution beyond all reasonable doubt.

16. The learned counsel for the petitioner would submit that mere recovery is not a ground for conviction. To substantiate his argument, he relied upon the following decisions:

(a) In the decision reported in T. Subramanian Vs. State of Tamil Nadu, , it was held that if the accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, the accused would be entitled to acquittal. It is appropriate to incorporate paragraph 16 and 17 of the said decision:

"16. The High Court did not consider the explanation offered by the appellant for the receipt of the money nor the previous enmity harboured by PW-1, PW-2 and PW-6 towards the appellant. Nor did it hold that the decision of the trial court was erroneous or perverse. Re-appreciating the very evidence (on which the trial court had reached the conclusion that the payment was not by way of an illegal gratification but was towards lease rent due by PW-6 and paid through PW-1), the High Court relying on the evidence of PW-1, PW-2 and PW-6 concluded that the payment was by way of illegal gratification. In particular, it relied on the denial by PW-6 that he had sent any amount through PW-1, against the appellant. But the mere denial by PW-6 that he had sent the money through PW-1 cannot be a ground to hold the appellant guilty. If PWs. 1, 2 and 6 had hatched a conspiracy to involve the appellant in a criminal case, naturally PW-6 would deny having sent the amount through PW-1. The explanation given by the appellant immediately after the incident clearly explains all the circumstances and raises not only a reasonable but very serious doubt about the amount having been received by him as illegal gratification.

17. The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs. 1, 2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs. 200/- as illegal gratification. We are, therefore, of the considered view that the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same."

(b) For the very same preposition, the learned counsel relied upon the decision reported in Vedagiri Vs. State, , wherein it was held that mere acceptance is

not a ground for conviction and the prosecution has to prove that the appellant has demanded and received illegal gratification. It is appropriate to incorporate paragraphs 27 and 28 of the said decision:

"27. There is also another disturbing feature in this case. It is the categorical version of P.W. 2 that after the receipt of the amount from the handkerchief (M.O. 8), the accused said to have put the amount into his pant pocket. But the investigating officer P.W. 20 has not subjected the pant pocket to phenolphthalein test. Therefore, the entire version of the prosecution in respect of the receipt and recovery of the bribe amount from the accused is bristled with suspicious circumstances. There is considerable doubt about the veracity of the prosecution version.

28. The Hon"ble Supreme Court of India has held in T. Subramanian Vs. State of Tamil Nadu, that,

"Mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of accused-If accused offers reasonable and probable explanation based on evidence that the money was accepted by him other than as an illegal gratification, accused would be entitled to acquittal.""

(c) In the decision reported in State of Kerala and Another Vs. C.P. Rao, , it was held that the recovery of tainted money is not sufficient for conviction. It is appropriate to incorporate paragraph 10 of the said decision:

"10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, , this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Administration), held that 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 conviction cannot be sustained."

By relying on the above decisions, the learned counsel for the appellant would submit that mere recovery is not sufficient for conviction. The learned counsel would further submit that the prosecution has to prove that the accused has received the money as illegal gratification and only then the presumption under Section 20 of the Prevention of Corruption Act can be invoked. To substantiate the said contention, he relied upon the following decisions:

(d) In the decision reported in V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., , it was held that unless the prosecution has proved that the appellant/accused has received the money as illegal gratification, the presumption under Section 20 of the Prevention of Corruption Act cannot be

invoked. It is appropriate to incorporate paragraphs 24 and 25 of the said decision:

"24. Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under :

"20. Presumption where public servant accepts gratification other than legal remuneration. (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

25. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution."

(e) For the very same preposition, the learned counsel relied upon the decision reported in Subash Parbat Sonvane Vs. State of Gujarat, , wherein it was held that the presumption under Section 20 of the Prevention of Corruption Act can be invoked only for the offence punishable under Section 7 or Section 11 or Clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13. It is appropriate to incorporate paragraph 9 of the said decision:

"9. Same is the position of statutory presumption under Section 20 of the Act and is available for the offence punishable under Section 7 or Section 11 or Clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13."

(f) For the very same preposition, the learned counsel also relied upon the decision reported in Union of India (UOI) thr. Inspector, CBI Vs. Purnandu Biswas, . It is appropriate to incorporate paragraph 36 of the said decision:

"36. In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act."

17. Thus, as already stated, the evidence of P.W. 2/Shanmugaraj and P.W. 5/

Balasundaram are not reliable and mere recovery of amount is not sufficient for conviction. Now this Court has to decide whether the appellant/accused has submitted the plausible explanation. It is appropriate to consider the written statement filed by the accused at the time of questioning under Section 313 Cr.P.C. During the said questioning, the appellant/accused had stated that no such occurrence had taken place and that he had not received any amount. Further, the document has been concocted and so, he had refused to sign the recovery mahazar. Furthermore, the phenolphthalein test has not been conducted. The non-examination of Abdul Razack, foreman is fatal to the case of the prosecution. Thus, the following points are to be taken note of.

(i) The appellant herein has given plausible explanation i.e., the enmity between him and P.W. 2.

(ii) The appellant herein had passed an order for replacing the faulted meter with a new one, even on 17.08.2000.

(iii) The first demand was not proved by the prosecution.

(iv) Even at the time of the alleged second demand, as per the document Ex. D. 4/FIR, the appellant/accused was at the Egmore Police Station for preferring a complaint. So, his presence at the time of trap has not been proved by the prosecution.

18. Considering all the above aspects, I am of the view that the Trial court has committed an error in convicting the appellant/accused under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. So, the conviction and sentence is unsustainable and same is liable to be set aside and accordingly set aside.

19. In fine,

(a) The Criminal Appeal is allowed.

(b) The judgment of conviction and sentence dated 20.02.2008 made in C.C. No. 7 of 2001 on the file of the learned Additional District and Sessions Judge/Special Judge, City Civil Court, Chennai is hereby set aside.

(c) The appellant is acquitted from the charges levelled against him and he is set free.

(d) The fine amount paid by the accused is ordered to be refunded to him.

(e) The Bail bond, if any executed by the appellant, shall stand canceled.