

(2016) 07 MAD CK 0101

In the Madras High Court

Case No : Crl. R.C. No. 540 of 2015.

**State represented by : The Public Prosecutor, High Court, Madras.
(Vigilance and Anti-Corruption Department, Villupuram, Crime
No.03/2013) - Petitioner @HASH C. Rajavel**

Date of Decision : 20-07-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), Section 13(2), Section 7,
Section 9

Citation : (2016) 4 MLJCriminal 341

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : Mr. P. Govindarajan, Addl. P.P, for the Petitioner; Mr. N. Muralikumaran for Mr. R. Gopinath, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. R. Subbiah, J. - This revision petition is filed by the State as against the order passed by the Special Court for the cases under the Prevention of Corruption Act, Villupuram, dated 13.03.2015 in Crl.M.P.No.339 of 2014 in Special Case No.69 of 2014, in discharging the respondent/accused under Section 227 Cr.P.C. from the charge under Sections 7, 9, 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

2. The case of the prosecution is that the respondent/accused was Village Administrative Officer (VAO) of Pandiankuppam Village from 12.10.2012 to 28.05.2013 and he was a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act during the relevant point of time. In the year 2011, the de-facto complainant Chandra approached the respondent/accused for patta transfer of property situated in Rayappanur Village, from the name of her husband to her name and in the name of her children, for which, the respondent/accused demanded bribe from the defacto complainant, who paid Rs. 17,000/- as instructed by one Balakrishnan to the respondent/accused. Thereafter, on 24.05.2013, again, the de-facto complainant met the respondent/accused at about 10 hours in his house at Chinnasalem for mutation of patta in respect of

the left out portion of the land. It is the further case of the prosecution that the respondent/accused informed the defacto complainant that he was not holding the post of VAO and one Mrs. Gunavathy was the new VAO for the said village. The respondent further stated that the said Gunavathy would adhere to his words and thus, he demanded Rs. 7,000/- as illegal gratification for himself from the de-facto complainant as a motive or reward for inducing by exercise of personal influence over the VAO of the concerned jurisdiction Mrs. Gunavathy and also over the officials of Taluk Office for patta mutation. On the plea of the de-facto complainant Mrs. Chandra, expressing her inability to pay the amount, the respondent/accused reduced the amount to Rs. 5,000/- and he also instructed her to meet him on 28.05.2013 at about 12 noon in his house. In pursuance of the respondent's earlier demand, on 28.05.2013 and in between 3.45 and 3.50 p.m. at Chinnasalem, in the house of the respondent/accused, the accused reiterated his earlier demand and obtained Rs. 5,000/- as illegal gratification for himself from the de-facto complainant for processing and executing the work of patta mutation. Hence, it is the case of the prosecution that the respondent committed the offences punishable under Sections 7 and 9 of the Prevention of Corruption Act. It is the further case of the prosecution that in the course of the same transaction, at the same time and place, the respondent/accused being a public servant, by corrupt and illegal means and by abusing his official position, obtained the pecuniary advantage of Rs. 5,000/- and hence, he has also committed the offences punishable under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. On completion of the investigation, charge-sheet was filed before the trial Court and the case was taken on file in Special Case No.69 of 2014. Thereafter, the respondent/accused filed discharge petition in Crl.M.P.No.339 of 2014 in Spl.C.No.69 of 2014. The trial Court allowed the discharge petition. Challenging the said discharge, the State has preferred this revision petition.

3. The trial Court allowed the discharge petition on the following reasons:

(i) From the documents filed by the prosecution, including the charge sheet, it was observed that the application for issuance of patta in favour of the de-facto complainant was not filed. In the absence of such application, there is no possibility to establish that the de-facto complainant approached the accused on 24.05.2013 with a request for transfer of patta in her name.

(ii) The property(ies) for which the de-facto complainant approached for mutation of patta in S.Nos.333/1B, 333/2C and 333/4A, have already been mutated in the name of the complainant and her children as early as on 2011. Therefore, the statement of the de-facto complainant that she had approached the respondent/accused for transfer of patta appears to be not true.

(iii) In the statements, witnesses 5 and 6 have spoken about the incidents on 24.06.2013 and 25.06.2013, but the said statements were signed by the investigating officer on 04.06.2013, and therefore the same itself discloses that the case of the prosecution is nothing but a cooked up story.

4. Learned Additional Public Prosecutor appearing for the petitioner/State submitted that the trial Court, by relying upon the documents produced on the side of defence, allowed the discharge petition. He further stated that though on the alleged date of demand, it is the case of the respondent/accused that he was attending "Jamabandhi", but, at the time of framing charges, the materials produced by the prosecution alone have to be considered and the accused has no right to produce any material documents at that stage. Learned Additional Public Prosecutor further submitted that the trial Court, by appreciating the statement of the witnesses recorded under Section 161 Cr.P.C. and also upon analysing the pros and cons of the case by conducting mini trial, has allowed the discharge petition. He further submitted that on 28.05.2013, a trap was laid and the respondent/accused was caught red-handed, but ignoring this aspect, the trial Court allowed the discharge petition on erroneous reasons and hence, he prayed for allowing the revision petition.

5. Per contra, learned counsel for the respondent/accused submitted that it is not a straight-jacket formula to say that the defence documents cannot be considered at the time of framing charges. In support of his submissions, learned counsel for the respondent/accused relied on a judgment of the Supreme Court reported in 2008 (14) SCC 1 (Rukmini Narvekar v. Vijaya Satardekar), wherein, the Apex Court held that in very rare and exceptional cases, where some defence material when shown to the trial Court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases, the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. On the date on which the de-facto complainant was said to have approached the respondent/accused, it is the case of the respondent/accused that he was attending "Jamabandhi" session headed by the District Collector, which took place from 10 a.m. onwards on 24.05.2013. Therefore, for the above reasons, the learned counsel for the respondent/accused submitted that there is no infirmity in the impugned order of discharge passed by the trial Court and prayed for dismissal of the revision petition.

6. Keeping in mind the above submissions, I have carefully perused the materials available on record.

7. As contended by learned counsel for the respondent/accused, it is no doubt true that in rare cases, the defence documents can be looked into at the time of framing charges. So far as the present case is concerned, a trap was laid and the respondent/accused was caught red-handed on 28.05.2013 in the presence of the witnesses Chandra, Devika and Moorthy, which is also evident from their respective statements recorded by the Police, in which they have spoken about the trap laid on 28.05.2013.

8. Therefore, the above aspect of trap was not properly considered by the trial Court, and therefore, this cannot be taken as a rare case. Moreover, by discussing the pros and cons of the case at the time of framing charges, the Court is not required to go deep into the probative value of materials on record;

it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused. In this regard, it is worthwhile to notice the judgment of the Supreme Court reported in (Sheoraj Singh Ahlawat Vs. State of U.P), AIR 2013 SC 52 : 2013 (11) SCC 476 : LNIND 2012 SC 744, wherein the Apex Court held that while framing charges, Court is required to evaluate the materials and documents on record to decide as to whether the facts emerging therefrom taken at their face value, would disclose existence of ingredients constituting the alleged offence; at this stage, the Court is not required to go deep into the probative value of materials on record; it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused; even if there is a grave suspicion against the accused and it is not properly explained or Court feels that the accused might have committed the offence, then framing of charges against the accused is justified and it is only for conviction of accused that the materials must indicate that the accused had committed the offence, but for framing of charges, if the materials indicate that the accused might have committed the offence, then framing of charge is proper.

9. Since the trial Court has not considered the statement of trap witnesses and in view of the dictum laid by the Supreme Court in the above said decision, the impugned order of the trial Court is liable to be set aside. Accordingly, the impugned order is set aside. The trial Court is directed to proceed with the trial and conclude the same and dispose of the case as early as possible, preferably within a period of six months from the date of receipt of a copy of this order and the trial Court shall pass orders uninfluenced by any of the observations made in this order. The respondent/accused shall co-operate for the trial.

10. With the above observations and directions, the CrI.R.C. is allowed.