(2003) 06 MAD CK 0078

In the Madras High Court

Case No : Criminal Appeal No. 126 of 1997

Xavier Selvaraj	APPELLANT
Vs	
State by Inspector of PoliceVigilance and Anticorruption	RESPONDENT

Date of Decision : 19-06-2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 374

Citation : (2003) 06 MAD CK 0078

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : N. Chandrasekaran, for Paul Vasantha Kumar, for the Appellant; O. Srinath, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This appeal has been brought forth by the appellant, who was charged, tried and found guilty under Sections 7, 13(2) r/w 13(1)(e) of Prevention of Corruption Act and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/-, in default, two months simple imprisonment and no separate punishment u/s 7 of Prevention of Corruption Act was imposed.

2. The short facts that would be suffice for the disposal of this appeal can be stated as follows:

P.W.2, Balakrishnan and his brother purchased 5 cents of house sites in S.No.501/6 at Vembalur village and an application was made to the Tahsildar, Agastheeswaram requesting for the transfer of patta to their names. On 27.6.1992 they received Ex.P.4, Post card, from the Village Administrative Officer/ the accused herein summoning them to come with original documents on 27.6.1992. When the applicant approached the office on 6.7.1992, met the Village Administrative Officer and showed the post card, the Village Administrative Officer instructed him to come with original documents after two weeks. On 23.7.1992 when the applicant went over there with original documents, the accused/appellant demanded Rs.100/- as bribe for the issue of patta after perusing the records. The applicant expressed his inability to meet the said demand, then the accused informed him that he would issue patta if Rs.50/- paid and asked him to come with the amount before Monday evening. The applicant was not willing to do so and he informed the matter to the vigilance authorities by producing the original documents and post card. On receipt of the complaint from him, a case was registered by the Inspector of Police, Vigilance and Anticorruption, Nagercoil in Crime No.7 of 1992 u/s 7 of Prevention of Corruption Act on 27.7.92. The matter was taken up for investigation and a trap was arranged. The complainant, first, proceeded to the office of the accused with the police officials, but the accused went on leave. On 28.7.1992, they proceeded to the residence of the accused. When the accused reiterated his earlier demand, the complainant paid a sum of Rs.50/-, which was sprayed with Phenolphthalein powder. The appellant received the said amount and kept the same on his left side shirt pocket. The appellant asked the original documents and the post card and noted down the number in the post card. He returned the original documents to the complainant and kept the post card in his left side shirt pocket. He informed the complainant to meet him at his office on Saturday. When the complainant came out of the residence of the accused, as arranged earlier, he gave signal immediately to the investigating officers. They proceeded to the residence of the accused and a test was followed. The Investigating Officer asked the accused to produce the amount received from the complainant. The left side shirt pocket of the accused was also subjected to the test after giving another shirt. The test was also proved positive. Under such circumstances, further investigation was completed and a charge sheet was also laid.

3. In order to prove its case, the prosecution examined P.W.1 and P.W.12 and marked Exs.P.1 to P.31, apart from marked M.Os.1 to 5. The accused was questioned u/s 313 of Cr.P.c. as to the incriminating circumstances in the prosecution witnesses, which are flatly denied by the accused as false. No defence witnesses were examined. After considering the rival submissions and careful scrutiny of the available materials, the trial court found him guilty and convicted him as stated above.

4. Arguing for the appellant with vigour and vehemence the learned counsel would submit that there was no material corroboration in the prosecution case to hold that the appellant was guilty, but the trial court has relied on unreliable evidence; that the prosecution has not proved the case beyond reasonable doubt; that as per the evidence of prosecution, P.W.2, complainant applied for patta transfer on 26.5.1992; that he received a letter dated 24.6.1992 from the office of the accused asking him to meet with records under Ex.P.4; that it is pertinent to note that as per the records produced by the prosecution, the accused/appellant has recommended for the transfer of patta on 25.6.1992; that even as per the evidence of P.Ws.5 and 7, the Deputy Tahsildar passed an order

of transfer of patta as early as on 30.6.1992, and hence, it would be abundantly clear that the order of transfer of patta was passed 23 days before the alleged demand was made on 23.7.1992; that this would directly improbablise the case of the prosecution; that there is nothing to speak about the abuse of official position; that the evidence of P.W.3, when looked into, it would be indicative that there was a demand for money, but the purpose for which the demand was made has not been spoken to, and therefore, it cannot be stated that the demand was made for the specific purpose of transfer of patta as alleged by the prosecution, but it might be for anything.

5. Added further the learned counsel that the conduct of the complainant in giving complaint with an undue delay and the conduct of the Police waiting for 24 hours would indicate that the police had a plan to trap the accused. This would indicate that this was not a true case what was brought forth before the Court. In order to substantiate his contentions, the learned counsel for the appellant relied on M. Narayanan Nambiar Vs. State of Kerala, , Deepchand Jot Ram Vs. The State, AND Suraj Mal Vs. State (Delhi Administration), and he would urge that the case of prosecution neither proved factually nor legally and the appellant is entitled to for acquittal.

6. Countering to the above contentions of the appellant''s side, the learned Government Advocate (Criminal side) would point out that the prosecution by suffice evidence has proved the demand of bribery that was made by the appellant on 23.7.1992; that the complainant''s evidence in this regard was fully corroborated by the evidence of P.W.3; that there is evidence to show as to the payment by the complainant and the acceptance of Rs.50/- by the appellant; that a test has also been followed immediately, which has been proved positive; that it is true that the post card was sent by the appellant on 24.6.1992 asking the complainant to appear with original documents on 27.6.1992; that even the order of transfer of patta was passed on 30.6.1992; that it would be made only with the knowledge of the appellant and not known to the complainant; that even assuming that the order of transfer of patta was passed, the appellant/ accused had no business to make a demand for bribery and received the same and it would be nothing but abusing of official position; that it is true that from the available evidence it could be seen that the complainant and the police officials were waiting for a day and the trap was made properly and the tests have also been proved positive and other legal requisites have also been proved properly; that the citations brought forth before the Court are not applicable to the present facts of the case, and hence, the lower court''s judgment has got to be confirmed.

7. After careful consideration of the rival submissions and scrutiny of the materials available, the Court has to necessarily reject the appeal put forth by the appellant. In the instant case, admittedly, the appellant was working as Village Administrative Officer and it is also not in dispute that the complainant, P.W.2 and his brother purchased 5 cents of house site and they made an

application before the Tahsildar, Agastheeswaram requesting for the transfer of patta to their names. Admittedly, the appellant has sent a post card under Ex.P.4 asking them to appear with the original documents on 27.6.1992. When the complainant appeared on 6.7.1992, the appellant asked him to come after two weeks. On 23.7.1992 when the applicant appeared there with original documents, the accused/appellant demanded Rs.100/-. P.W.2 expressed his inability to meet the demand, then the bribe amount of Rs.100/- was reduced to Rs.50/-. This part of the case of the prosecution was not only spoken to by the complainant, but also has been clearly corroborated by the evidence of P.W.3. A complaint was lodged. The officials have also made arrangements to trap him. Accordingly, the complainant was accompanied with officials and have waited for a day. This does not mean that this kind of act would in any way affect the truth and genuineness of the prosecution case. After receiving the amount, the accused was caught and tested, which has been proved positive. Therefore, this Court has no hesitation to hold that the appellant had made a demand and accepted the bribe amount.

8. Now, the only question that would arise is that whether there was any abuse of official position as required by law. The court is unable to agree with or appreciate the contentions put forth by the learned counsel for the appellant stating that since the order of transfer of patta has already been made as early as on 30.6.1992, it would be highly improbable on the part of the appellant to make a demand and the same cannot be construed as abuse of official position. In the instant case, as rightly pointed out by the learned Government Advocate, the transfer of patta though made on 30.6.1992, it should have been made only well within the knowledge of the appellant and not the complainant. There is no evidence to show that the same was informed to the complainant earlier. The appellant though having the knowledge that the order of transfer of patta has been made, has made a demand on 23.7.1992, and therefore, this demand was done only with the dishonest intention and hence it has to be necessarily construed as abuse of official position. The Court is unable to agree with the contentions of the appellant''s side. The lower court was perfectly correct in holding that the accused was found guilty for the charges levelled against him. Apart from that the lower court has given a minimum punishment of one year. Therefore, no question of interference of the judgment of the lower court would arise.

9. In the result, the judgment of conviction and sentence by the lower court is confirmed. The criminal appeal is dismissed. The Sessions Court shall take steps to commit the appellant/accused to prison, if he is on bail, to undergo the remaining period of sentence.